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No. 934

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1948

GREENE COUNTY NATIONAL FARM LOAN  
ASSOCIATION, et al,  
Petitioners,

vs.

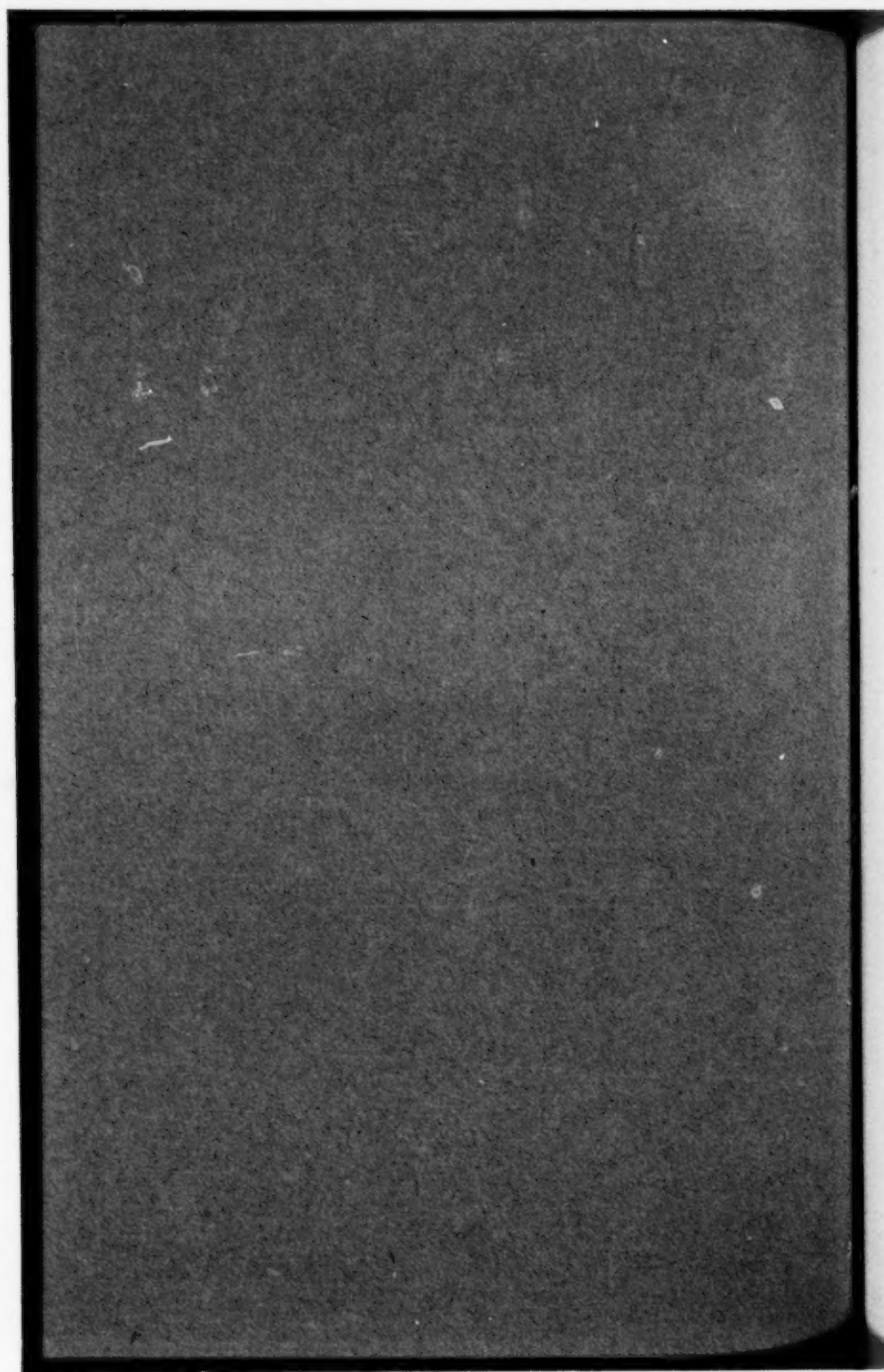
THE FEDERAL LAND BANK OF LOUISVILLE, et al,  
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT AND BRIEF  
IN SUPPORT THEREOF.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1946

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No. ....

**GREENE COUNTY NATIONAL FARM  
LOAN ASSOCIATION, and HAMBLÉN  
COUNTY NATIONAL FARM LOAN  
ASSOCIATION,**

**Petitioners,**

**vs.**

**THE FEDERAL LAND BANK OF LOUIS-  
VILLE, a Corporation, and THOMAS P.  
COOPER, MARVIN J. BRIGGS, R. S. FOUTS,  
T. E. HORD, JR., W. E. STOUGH, CARL H.  
SCHWYN, AND JOE A. VITTITOW,**

**Respondents.**

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
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IN SUPPORT THEREOF.**

---

**TO THE HONORABLE CHIEF JUSTICE AND THE AS-  
SOCIATE JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES.**

Your petitioners, Greene County National Farm Loan Association and Hamblen County National Farm Loan Association respectfully show the Court:

### SUMMARY STATEMENT OF MATTERS INVOLVED

The respondent, The Federal Land Bank of Louisville, is a corporation, organized and existing under the laws of the United States. It is the Land Bank for the Fourth Farm Credit District, comprising the States of Ohio, Indiana, Kentucky and Tennessee. It will be hereinafter referred to as the Bank.

The respondents, Thomas P. Cooper, Marvin J. Briggs, R. S. Fouts, T. E. Hord, Jr., W. E. Stough, Carl H. Schwyn, and Joe A. Vittitow, are all members of and constitute the full Board of Directors of the Federal Land Bank of Louisville (Record 113). They will be referred to hereinafter as the directors.

The petitioners, Greene County National Farm Loan Association, and Hamblen County National Farm Loan Association, are both corporations, organized and existing under the laws of the United States. They will be hereinafter referred to as the Associations. They are now, and were, at the time of the institution of this suit, owners of several thousand shares of the capital stock of said Bank. As of December 31st, 1943, there were 1,582,326 shares of such Stock. The petitioners own approximately 5,000 shares and the remainder was owned by the other 432 Associations in the Fourth Farm Credit District except 1,984 shares held by 58 individual borrowers (Record 97, 98).

Stock in the Farm Loan Association and in the Federal Land Bank is acquired in the following manner:

The borrower purchases stock in the Association in the amount of \$5.00 for each \$100.00, or major fractional part thereof borrowed, and pledges this stock as collateral

security for the loan. The Association endorses the note to the Bank and, in turn, purchases a like amount of stock in the Bank and pledges such stock as collateral security for its endorsement liability. The stock of the borrowers is required to be paid off at par, and retired upon payment by the borrower of the loan in full. Where the Association is indebted to the Bank, the proceeds of the stock of the Association in the Bank are set off against such indebtedness (Record 102). Thereupon, the Association issues to the borrower the right to share in the net assets of the Association after all obligations of the Association have been satisfied (Exhibit 7, Record 143).

Through their liability to the Federal Land Bank on loans of their borrowers, and through loose business methods in the operation of their offices, several Associations in the Fourth Farm Credit District have, from time to time, become insolvent. The Federal Land Bank saw fit to classify the Associations in its District as follows:

A Class 1 Association is an Association which is, in all respects, solvent.

A Class 2 Association is an Association apparently unable to meet its obligations currently without a present impairment of capital, but which is expected to work out of its difficulties within a reasonable time.

A Class 3 Association is an association which is unable to meet its obligations currently without a material impairment of capital, but which impairment will not exceed the par value of its capital stock.

A Class 4 Association is an Association with a total impairment of capital (Record 98 and 99).

Each of the petitioners is classified as a Class I Association (Record 99).

On June 30th, 1943, of the 434 Associations in the Fourth Farm Credit District, 282 were in Class 1, 23 in Class 2, 85 in Class 3 and 46 in Class 4 (Record 99).

The respondent, The Federal Land Bank of Louisville, by resolution of the executive committee of said Bank, and with the approval of its directors, approved a plan for a consolidation of the 434 Associations in the Fourth Farm Credit District into 94 Associations. Said plan so adopted provided for the cancellation by said Bank of the then existing indebtedness to it of insolvent Associations amounting to \$1,480,286.41, and for the payment in cash from the assets of said Bank of the sum of \$1,004,875.00, to insolvent Associations to be used by them in paying in full to their borrowers the amount of their stock, evidenced by the stock retirement certificates theretofore issued to them. The plan provided also for the establishment by the Bank of reserves to the extent necessary to take care of future estimated losses of the Associations. The reserves to be so established amounted to \$620,333.00 (Exhibit, Record 345). This plan was submitted to the Farm Loan Associations of the Fourth Farm District for their approval, and was rejected by petitioners.

On the 5th day of January, 1944, petitioners, and two other Associations, suing for the benefit of themselves and all other stockholders, filed their bill of complaint in the United States District Court for the Western District of Kentucky at Louisville attacking that part of said plan which proposed to cancel the entire debts of, pay large sums of money to, and set up reserves for other stockholders of said Bank, as an illegal use of corporate funds and a discrimination of the respondent Bank among its stockholders. They prayed for an injunction against such use of the corporate funds, and for judgment against the directors for

any loss that had been sustained. Bill of Complaint (Record 2 to 10).

After filing their said bill, petitioners were advised that the Land Bank had already distributed to some of its stockholders the sum of \$979,144.80, and thereupon, and before a responsive pleading had been served on them, they amended their original bill and prayed that the distributions so made to stockholders constitute a dividend, and that they, and all other stockholders should have and recover similar amounts based upon the stock held by the respective stockholders, or, in the alternative, that they have and recover judgment against the members of the Board of Directors, and the respondent corporation for the illegal use of corporate funds (Record 18 to 19).

The Federal Land Bank and its directors filed their respective answers admitting that the sum of \$979,144.80 had already been paid out to insolvent Associations in order to enable them to satisfy the claims of former members, and that additional payments, cancellation of credits and the establishment of reserves, as set out in the plan, were anticipated. They alleged as justification for the plan, a savings in the operation of the Bank and intangible benefits passing to the corporation from a general improvement of the Land Bank and the Farm Loan Associations within its jurisdiction (Answer, Record 22 to 31).

In the proposed plan which is filed as Exhibit "B" to the answer of respondent Bank, it is stated:

"The fundamental consideration, however, though intangible from the standpoint of dollar measurement, is the permanently beneficial effects of the consummation of this plan upon the welfare, and particularly upon the financial improve-



ment of the Louisville Bank and the associations serving as a credit institution for the farmers of the Fourth District." (Record 48).

Because of the fact that the Farm Credit Administration has general supervision of the Federal Land Banks and Farm Loan Associations, and had been instrumental in obtaining the approval of the expenditures complained of, it was named as a party defendant in the bill of complaint.

The Farm Credit Administration moved the Court to dismiss the complaint as to it, because it was an agency of the United States Government and not subject to suit. This motion was sustained (Record 76 and 77).

Thereupon petitioners amended their original bill so as to name as parties defendant the Commissioners of the Farm Credit Administration (Record 78, 79). However, service of process on the Commissioners was not obtained.

The suit was tried in the United States District Court on a stipulation of facts and Exhibits attached thereto (Record 90 et seq.).

The case was presented to the Court and argued on May 9th, 1944 (Record 403).

Briefs were then filed and the case taken under advisement until November 16th, 1944, at which time the District Judge filed his findings of fact and conclusions of law, holding that the corporation and its directors had a legal right to make the disbursements and cancel the credits complained of.

Opinion and Findings of Fact and Conclusions of  
Law (Record 403 to 421).

A decree was entered adjudging the issues against petitioners and in favor of respondents, to which action petitioners excepted (Record 421).

Thereupon petitioners filed their petition for a rehearing (Record 422 to 424). Said petition for a rehearing was overruled (Record 424). Petitioners, thereupon, filed notice of appeal and bond.

Appeal was perfected to the Circuit Court of Appeals for the Sixth Circuit.

On the 13th day of December 1945, the Circuit Court of Appeals filed its opinion, affirming the judgment of the District Court. (Record pp. 439—448).

## — II —

### **BASIS OF JURISDICTION TO REVIEW**

Jurisdiction is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13th, 1925, 28 U.S.C.A. 347(a).

The opinion of the Circuit Court of Appeals for the Sixth Circuit was filed on December 13th, 1945. (Record 439), and the judgment of the Circuit Court of Appeals affirming the decree of the District Court was entered on the same date. (Record 437).

## — III —

### **QUESTIONS PRESENTED**

Two fundamental questions are presented.

(1) Whether or not a corporation under the supervision and control of an agency of the United States Govern-

ment has the same powers, duties and liabilities in its relationship to its stockholders as a private corporation, except in so far as its powers, duties and liabilities may be changed by an express provision of the Statute under which it is created.

In the case at bar, the Circuit Court of Appeals held that the controversy does not lie in the field of private corporation law. (Record 445).

(2) Whether the respondents, Federal Land Bank of Louisville, and its directors, have, under the provisions of the Federal Farm Loan Act, either expressed or implied power to distribute corporate assets, amounting to three million dollars to one-third of its stockholders to the exclusion of the other two-thirds, except for an adequate and tangible consideration.

The Circuit Court of Appeals failed to find that there was an adequate and tangible consideration for such a distribution of funds, and held that the allocation of funds in conformity with the plan was justified and an expedient for carrying out the broad public purposes of the Statute under which the Federal Land Bank of Louisville was created.

(Opinion, Circuit Court of Appeals, Record 448).

— IV —

**REASONS RELIED ON FOR ALLOWANCE OF WRIT**

(1) The principal question involved is a question of Federal law of national importance which has not been, but should be settled by this Court.

(2) The Circuit Court of Appeals has decided a Federal question, probably in conflict with the applicable decisions of this Court. Unless this Court should find and hold that the principles of law applicable to the relation of corporation and stockholders in private corporations are not applicable to corporations created under the Statutes of the United States and under the control and supervision of a Federal agency, the opinion of the Court of Appeals is in conflict with the following decisions of this Court:

**Head & Armory v. The Prudential Life Insurance Co.**, 2 Cranch, 127, 2 Law Ed., 229, wherein this Court first declared the limitation of corporate powers to be precisely what the corporate act has made it.

**B. & O. Railroad Co., v. Harris**, 79 U.S. 69, wherein the Court held that a corporation can do only what is authorized by its charter and the Statutes under which it is created.

**Rice v. Minnesota and Northwestern R.R. Co.**, 66 U.S. 359, and **Louisville C. & C. R. Co., vs. Leston**, 43 U.S. 497, wherein the Court held that corporate powers are to be strictly construed and that no rights are given but what are granted in clear and explicit terms.

**Page, Exr., v. United States**, 78 U.S. 268, wherein the Court held that a corporation holds its stock as a quasi trustee for its stockholders, creating a fiduciary relationship, which requires dealing at arm's length.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court, a full and complete transcript of the record of the proceedings in said Circuit Court of Appeals had in

the case numbered and entitled on its docket, No. 10034, Greene County National Farm Loan Association, et al, appellants, vs. The Federal Land Bank of Louisville, et al, appellees, to the end that this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States, and that the judgment of said Circuit Court of Appeals be reversed by this Honorable Court, and that your petitioners may have such other and further relief as to this Court may seem proper.

GREENE COUNTY NATIONAL FARM  
LOAN ASSOCIATION, and HAMBLEN  
COUNTY NATIONAL FARM LOAN  
ASSOCIATION,

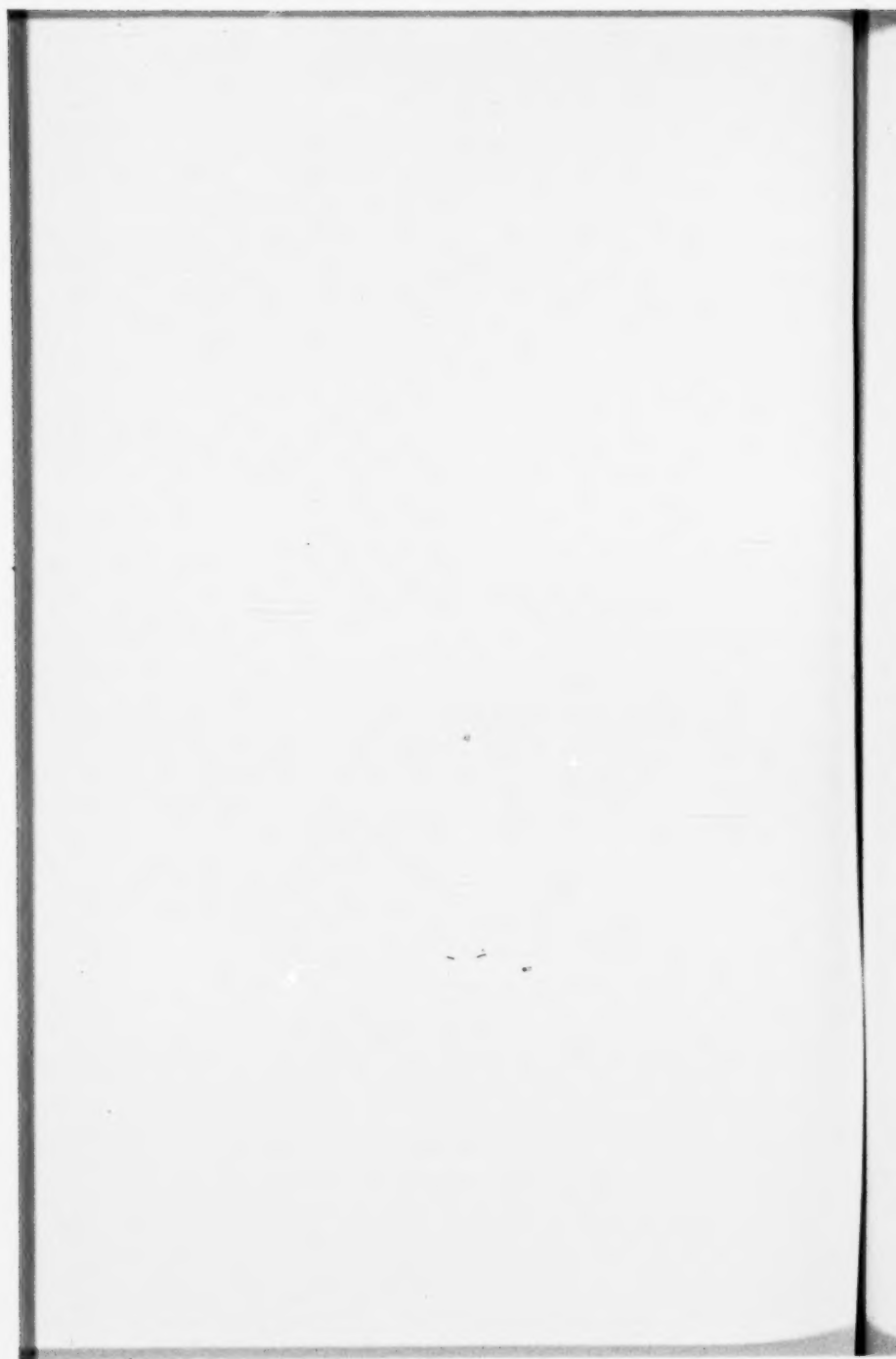
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**vs.**

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VILLE, a Corporation, and THOMAS  
P. COOPER, MARVIN J. BRIGGS, R. S.  
FOUTS, T. E. HORD, JR., W. E. STOUGH,  
CARL H. SCHWYN, AND JOE A. VITTITOW,**

**Respondents.**

---

**BRIEF IN SUPPORT OF PETITION FOR WRIT  
OF CERTIORARI.**

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**OPINIONS BELOW**

The opinions and findings of fact and conclusions of law of the District Judge appear in the Record at pp. 403 to 221, and is reported in 57 Federal Supplement, 783.

The opinion of the Circuit Court of Appeals appears in the Record at pp. 439 to 448, and is reported in 152 Fed. (2d.) 215.

## JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13th, 1925—28 U.S.C.A. 247(a).

## STATEMENT OF THE CASE

A concise statement of the matters involved and the facts which are material to the questions presented are set out in the petition, and in the interest of brevity, will not be repeated.

## ERRORS RELIED UPON

It is respectively urged that the Circuit Court of Appeals erred:

(1) In holding that a controversy between the stockholders and a corporation under the supervision and control of an agency of the United States Government does not lie within the field of private corporation law and is not subject to the same strict principles which are applicable to a trust relationship.

(2) In holding that the Federal Land Bank of Louisville, and its directors, have, under the provisions of the Federal Farm Loan Act, power to distribute corporate assets, amounting to three million dollars to one-third of its stockholders to the exclusion of the other two-thirds, as an expedient, and for an intangible consideration.

## ARGUMENT

### Summary of Argument

Point 1. A Corporation under the supervision and control of an agency of the United States Government has

the same powers, duties and liabilities in its relationship to its stockholders as a private corporation, except in so far as its said powers, duties and liabilities may be changed by an express provision of the Statute under which it is created.

Point II. The Federal Land Bank of Louisville, and its directors do not have either expressed or implied power to distribute corporate assets amounting to three million dollars to one-third of its stockholders to the exclusion of the other two-thirds, except for an adequate and tangible consideration.

#### POINT I

A CORPORATION UNDER THE SUPERVISION AND CONTROL OF AN AGENCY OF THE UNITED STATES GOVERNMENT HAS THE SAME POWERS, DUTIES AND LIABILITIES IN ITS RELATIONSHIP TO ITS STOCKHOLDERS AS A PRIVATE CORPORATION, EXCEPT IN SO FAR AS ITS SAID POWERS, DUTIES AND LIABILITIES MAY BE CHANGED BY AN EXPRESS PROVISION OF THE STATUTE UNDER WHICH IT IS CREATED.

The Circuit Court of Appeals, in its opinion, **Record pp. 444 and 445**, held that the controversy between the parties does not lie in the field of private corporate law. This holding is based upon the fact that the respondent Bank is under the supervision and control of an agency of the United States Government, and is, in effect, a public or quasi public corporation. The controversy, in its present aspect, is one which involves the relationship existing be-

tween the stockholders and the corporation, and whether or not that relationship is one of a fiduciary nature which requires the same strict application of the principles of law relating to trusts, as have been applied to the same relationship between the stockholders and the corporation in private corporations. We respectfully submit that this question has never been passed upon by this Court; that it is a question of far reaching importance, not only to the parties in this suit, and other corporations organized and existing under the Farm Loan Act, but to many other corporations of a similar nature, which have been and may hereafter be created. A decision of this issue can, and, in all probability will, seriously affect the future economic development of this country.

In so far as the principles here are concerned, it would be difficult to distinguish between the Federal Farm Loan Act, and the National Banking Act, in so far as the trust relationship is concerned, and the supervisory powers and public purposes which might affect a construction of the respective acts.

The powers of the Comptroller of the Currency in the National Banking Act set up, are comparable to the powers and supervisory control of the Farm Credit Administration. The Federal Land Banks, and their powers, are comparable to the powers and functions performed by the Federal Reserve Banks under the National Banking Act, and the National Banks furnish the actual contact with the public, and in the main, carry out the broad general purposes of the Act—that is, to furnish a banking service and its facilities to the people of our country. The only distinguishing feature is the care and caution exercised by the Congress in making into law the Federal Farm

Loan Act, wherein it is provided that in the case of Federal Land Banks, "the stock owned by the Government of the United States in Federal Land Banks, shall receive no dividends but all other stock shall share in dividend distributions without preference." 12 U.S.C.A. 694.

Obviously this was inserted for the sole purpose of creating confidence in the minds of those who were to become investors, and own at least a part of the stock of these corporations. The success of any large business must depend upon the confidence which it is able to attain and maintain in the investing public, in order that it may acquire the capital with which to operate.

For some time, the legislative branch of our Government has recognized the responsibility of our Government to assist in maintaining proper relationships in the field of industry; that Government supervision and control of many key industries is desirable in order to protect labor from unfair practices of employers, to protect employers in their contracts with labor, and to protect the public from both. This tendency, and the demand for it, are becoming more and more in evidence. While it is not within the province of the judiciary to declare or determine legislative policy, it has always been the tendency of our Courts to encourage progress, and to interfere with legislative policy only when in direct conflict with the express provisions of our Constitution.

We think it is to be conceded that purchase by the Government of the assets of key industries, which have been, and may hereafter be placed under the control and supervision of a governmental agency, is impossible from the ordinary sources of Government revenues. They have, for the most part, been financed in the past by private

investors, and this is, of necessity, the only course open for the future.

The history of the development of private corporations reveals that their progress was slow and tedious until the trust relationship was firmly established and approved by the Courts, with no fine distinctions or exception which could be, under any pretext, used to bring about a preference as between investors, whether directly or indirectly. The rules of expediency were definitely replaced by fixed principles which have remained intact and unvaried. Upon these principles; the confidence of the investing public has been built and firmly established. If this confidence is to be further maintained in corporations under the supervision and control of an agency of the United States Government, the rights of the stockholders must be kept inviolate.

The District Court, in its opinion, **Record pp. 403, to 417**, and the Circuit Court of Appeals in its opinion, **Record pp. 439 to 448**, completely ignored the trust relationship, and the latter Court, in its opinion, **Record p. 448**, correctly referred to the plan which is under attack in this suit as "an expedient."

The Federal Farm Loan System is referred to in the opinion of the Circuit Court of Appeals as "an integrated cooperative organization." **Record p. 446**. If investors are to be attracted to such organizations, the word, "cooperative" must be determined to mean a sharing of the benefits of the common enterprise according to the contributions of the participants to the common effort, and not a sharing according to their needs.

We do not concede, as stated by the Circuit Court of Appeals in its opinion, that a reorganization of the Farm

Credit Districts is necessary. However, if such were the case, it would not justify the discrimination among the stockholders of the Federal Land Bank which is the result of the plan under attack. It would not justify replacing the strict principles of law applicable to trusts by principles of expediency and making of Government controlled corporations institutions to serve the stockholders according to their needs.

If it should be determined by this Court, that a reorganization is necessary, then that can be accomplished by other and legal methods expressly prescribed and set out in the Federal Farm Loan Act, which will be hereinafter discussed. However, an abandonment of the whole Farm Loan System, and the establishment of a new one, could not possibly affect our whole economic system, or the public interest as much as a legal precedent which would alay the confidence of present and future stockholders in Government controlled corporations. The investing public is an alert, well informed and cautious public. Doubt and suspicion as to the future of investments inevitably result in economic chaos.

## POINT II

THE FEDERAL LAND BANK OF LOUISVILLE, AND ITS DIRECTORS DO NOT HAVE EITHER EXPRESSED OR IMPLIED POWER TO DISTRIBUTE CORPORATE ASSETS AMOUNTING TO THREE MILLION DOLLARS TO ONE-THIRD OF ITS STOCKHOLDERS TO THE EXCLUSION OF THE OTHER TWO-THIRDS, EXCEPT FOR AN ADEQUATE AND TANGIBLE CONSIDERATION.



The District Court held that "the Federal Land Bank of Louisville was vested with all of the usual powers of the ordinary business corporation" (Record 420). That should have been conclusive in the consideration of the issues in the Circuit Court of Appeals, because no appeal was taken from this holding by the respondents, and it is supported by a comparatively recent opinion of the Supreme Court of the United States in **Federal Land Bank v. Priddy**, 295 U.S. at page 233, 79 Law Ed., 1408, in which at page 1411 and page 1412 of the opinion, the Court held that Federal Land Banks "thus have many of the characteristics of private business corporations distinguishing them from the Government itself, and its municipal subdivisions, and from corporations wholly Government owned and created to effect an exclusively Governmental purpose."

As to the considerations supporting the plan, we need look no further than the plan itself, which is filed as Exhibit "B" to the answer of respondents, wherein it is stated:

"The fundamental consideration, however, though intangible from the standpoint of dollar measurement, is the permanently beneficial effects of the consummation of this plan upon the welfare, and particularly upon the financial improvement of the Louisville Bank and the associations serving as credit institution for the farmers of the Fourth District." (Record 48).

The scope of corporate powers, expressed or implied, has never been extended so as to authorize the distribution of corporate funds to its stockholders, except as dividends on a pro rata basis, or for an adequate and tangible consideration.

A corporation has no power except what is given it by its incorporating act, either expressly or as incidental to its existence. Upon this basic principle, the economic structure of our nation was founded.

This basic principle had its beginning in an opinion by Chief Justice Marshall rendered on February 25th, 1804, in the case of **Head & Armory v. The Prudential Life Ins. Co.**, reported in 2 Cranch, 127, 2 Law Ed., 229, in which the Court said:

"Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all of its powers from that act, and to be capable of exercising its faculties only in the manner in which that act authorizes. To this source of its being, we must recur to ascertain its powers, and to determine whether it can complete a contract by such communications as are in this record."

**Head & Armory v. The Prudential Ins. Co.,**  
Co., *supra*.

The chief point of difference between an ordinary person and the corporation is that a person may do whatever is not forbidden by law, whereas the corporation can do only what is authorized by its Charter and the Statute under which it is created.

**B. & O. Railroad Co., vs. Harris, 79 U.S. 69,**  
20 Law Ed., 354.

Whenever privileges are granted to a corporation, and the grant comes under revision in the Courts, such privileges are to be strictly construed against the corporation, and in favor of the public, and nothing passes but what is granted in clear and explicit terms.

**Rice vs. Minnesota and Northeastern R.R. Co.,**  
66 U.S. 359, 17 Law Ed., 147.

A corporation is an artificial being, existing only in contemplation of law, and being a mere creature of law it possesses only those properties which the Charter of its creation confers on it, either expressly or as incidental to its existence.

**Louisville C. & Charleston R. Co., v. Leston,**  
43 U.S. 497, 11 Law Ed., 353.

A corporation has only such rights and powers as are expressly granted, or as are necessary to carry into effect the rights and powers so granted.

**In Re German Savings & Loan Association,**  
253 Fed. 722, 165 C.C.A. 316.

A corporation Charter is the measure of its powers, and enumeration of certain powers implies exclusion of all others not fairly incidental.

**B. & O. R. Co., v. Smith,** 56 Fed. (2d) 799.

The authority of corporations to make gifts in reasonable amounts to charities, Chambers of Commerce, and similar organizations, has been recognized by the Courts.

However, these are exceptions to the general rule, and in no case we have been able to find is there involved such staggering sums as those contemplated in the proposed plan.

Respondents insist that the disbursements do not constitute gifts, but are transactions between debtor and creditor, and that the relationship of corporation and stockholder should be ignored, because of the fact that the creditor and debtor relationship also exists. They further offer as justification that a majority of these stockholders have agreed to the plan. They completely ignore the fact that a trust relationship exists between the corporation and its stockholders, and that the corporation and its directorate must deal with its stockholders as cestuique trust. Both the District Court and the Circuit Court of Appeals ignored the trust relationship.

"Stockholders representing a majority of the stock may lawfully make a contract with the company, provided, according to some decisions, they are not also acting as officers or agents of the corporation in the transaction; but such a contract will be more closely scrutinized than if made with a third person, and unless it appears that it was made honestly and for an adequate consideration, equity will interpose to prevent such contract from being used oppressively and in violation of the rights of the minority. In other words, transactions between a majority stockholder and the corporation, while not void, 'will be viewed by the courts with jealousy and set aside on slight grounds'."

A corporation is, in effect, a Trustee for its stockholders.

**13 American Jurisprudence, p. 464.**

"A director is a fiduciary. *Twin-Lick Oil Co., v. Marbury*, 91 U.S. 587, 588, 23 L. Ed. 329, 330. So is a dominant or controlling stockholder or group of stockholders. *Southern P. Co. v. Bogert*, 250 U.S. 483, 492, 63 L. Ed. 1099, 1107, 39 S. Ct. 533. Their powers are powers in trust. See *Jackson v. Ludeling*, 21 Wall. 616, 624, 22 L. Ed. 492, 495. Their dealings with the corporation are subjected to rigorous scrutiny and where any of their contracts or engagements with the corporation is challenged the burden is on the director or stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein. *Geddes v. Anaconda Copper Min. Co.* 254 U.S. 590, 599, 65 L. Ed. 425, 432, 41 S. Ct. 209. The essence of the test is whether or not under all the circumstances the transaction carries earmarks of an arm's length bargain. If it does not, equity will set it aside."

**Pepper v. Litton**, 308 U.S. at pp. 306, 307, 84 Law Ed., 289.

"We completely agree with the Commission that officers and directors who manage a holding company in process of reorganization under the Public Utility Holding Company Act of 1935 occupy positions of trust. We reject a lax view of fiduciary obligations and insist upon their scrupulous observance."

**Securities and Exchange Com. v. Chenery Corp.** 318 U.S. 85; 87 Law Ed., 632.

"The fraud or breach of trust of one who occupies a fiduciary relation while in the exercise of a lawful power is as fatal in equity to the resultant act or contract as the absence of the power. The relation of a stockholder to his corporation, to its officers and to his co-stockholders is a relation of trust and confidence. The corporation holds its property in trust for its stockholders who have a joint interest in it. The officers of the corporation, if not technical trustees for the stockholders, are such in so real a sense that any use by them of the property of the corporation for their own profit to the detriment of any of the stockholders is a breach of their trust and their duty, which is actionable in equity. The stockholders of a corporation are jointly interested in the same property and in the same title. Community of interest in a common property or title imposes a community of duty and mutual obligation to do nothing to impair the property or the title. It creates such a fiduciary relation as makes it inequitable for any of those who thus share in the common property to do anything to or with it for their own profit, at the expense of others who have the same rights."

**Jones v. Missouri-Edison Electric Co., 75  
C.C.A. 631, at page 637 (8th Circuit).**

"A corporation holds its stock as a quasi trustee for its stockholders."

**Page, Exr., v. United States, 78 U.S. 268, 20  
Law Ed., 135, p. 142.**

"A corporation holds its property in trust for its stockholders. The stockholders have a joint interest in the same property and in the same title. Community of interest in a common proper-

ty or title imposes a community of duty and a mutual obligation to do nothing to impair either. It creates such a fiducial relation as makes it inequitable for any of those who thus share in the common property to do anything to or with it for their own profit, to the detriment of others who have the same rights."

**Wheeler v. Abilene National Bank Bldg., Co., C.C.A. (8th Circuit), 159 Fed. 391, 16 L.R.A. (N.S.) 892, at page 897.**

"It seems also to be well settled that for practical purposes a corporation may, in some respects, be treated as a trustee for the benefit of its stockholders, whenever necessary for the protection of their interests. In a sense it holds the corporate property in trust for the stockholders."

**Hyams v. Old Dominion Co., L.R.A. 1915D, 1128, at p. 1137 (Maine Supreme Court).**

"That a corporation is charged with many of the duties of a trustee toward its stockholders; that it is bound to exercise proper care and diligence in protecting the title of a cestui que trust, or equitable or beneficial owner; and that it is responsible for any injury sustained by its negligence or misconduct, are propositions so well established as not to require any discussion."

**Caulkins vs. Gas-Light Company, 85 Tenn., 695.**

The trust relationship existing between the respondent Bank and the National Farm Loan Association cannot be ignored in this instance, any more than in any other situation where a party acts in a dual capacity, such as a guardian, administrator, or trustee, who deals with his re-



latives, business associates, or others with whom he has some relationship which might influence his dealings. The Courts have frequently held that contracts between corporations and their stockholders will be upheld only where the consideration is adequate, and the terms of the contract fair to the corporation.

The fact that a large percentage of the stockholders have approved the plan does not affect the rights of the minority, no matter whether that minority be large or small.

**In Heim v. Jobs (8th Circuit), 14 Fed. (2d) 29, at page 32 of the opinion, the Court said:**

"One who owns the majority of the stock of a corporation and who dominates and controls such corporation may contract with the corporation, and such contract will be upheld where the consideration moving to the corporation is adequate, where the terms of the contract are fair to the corporation, and where the contract will further the best interest of the corporation. But a court of equity will hold such majority stockholder to the observance of the highest rectitude in dealing with the corporation, and where the contract is unfair and unconscionable, where the consideration is inadequate, or where the contract is not for the best interest of the corporation but subserves the selfish purpose of such stockholder, it will set aside such contract at the instance of the corporation or its minority stockholders.

"In Wheeler v. Abilene National Bank Bldg., Co., supra, Judge Sanborn stated the relation and duties of a majority of stockholders to the corporation and to the minority stockholders as follows:

"The holder of the majority of the stock of a corporation has the power, by the election of bidable directors and by the vote of his stock, to do everything that the corporation can do. His power to control and direct the action of the corporation places him in its shoes, and constitutes him the actual, if not the technical, trustee for the holders of the minority of the stock. He draws to himself and uses all the powers of the corporation. In effect he holds an irrevocable power of attorney from the minority stockholders to manage and to sell the property of the corporation, for himself and for them. Times, places and notices of meetings of the directors and of meetings of stockholders become of secondary importance, because the presence, the vote, and the protest of holders of the minority of the stock are unavailing against the will of the holder of the majority. They can act and contract regarding the corporate property, they can preserve and protect their interests in it, only through him and through the courts.

"This devolution of unlimited power imposes on a single holder of the majority of the stock a correlative duty, the duty of a fiduciary or agent, to the holders of the minority of the stock who can act only through him, the duty to exercise good faith, care and diligence to make the property of the corporation produce the largest possible amount, to protect the interests of the holders of the minority of the stock, and to secure and pay over to them their just proportion of the income and of the proceeds of the corporate property. Any sale of the property of the corporation by him to himself for less than he could obtain for it from another, or any other act in his interest to the detriment of the holders of the minority of the stock, becomes a breach of duty and of trust,

renders the sale or act voidable at the election of the minority stockholders, and invokes plenary relief from a court of chancery.'

"In *Heffern Co-op. Consol. Gold M. & M. Co. v. Gauthier*, *supra*, the court said:

"There is a prevailing idea with a great many men that majority shareholders of a corporation can conduct the business affairs of the corporation as they see fit. That is not so. While in a narrow and restricted sense it cannot be said that the holder of the majority of the stock of the corporation occupies a relation of trust, yet it can be said in a larger and broader sense that he occupies a fiduciary relation to the holders of the minority stock and the corporation, who can only act through him. In the broader sense the holder of the majority of the stock owes to the other stockholders and the corporation the duty to exercise good faith, care, and diligence to conserve the property of the corporation and to protect the interests of the minority stockholders, and any act of his, in dealing with the property of the corporation, in violation of this duty, for his own selfish interests and gain, will not and cannot be recognized. Majority shareholders can no more, for their own benefit and advantage, appropriate the property of the corporation, than the minority shareholders, and, where the act is in itself a violation of the duty that arises from their fiduciary relation, the corporation can rescind that act'."

**Heims v. Jobs, 14 Fed. (2d) 29, 32, 33.**

It may be insisted by the respondents that the foregoing authority has been applied, for the most part, where the majority of the stock was in the hands of one person.

We respectfully submit that whether the majority of stock is owned by one or several persons, the relationship and relative duties of the corporation to its minority stockholders are the same.

A corporation, whether its stock be owned by a few or many, has no right to take any action which would result in a discrimination against any part, or all of its stockholders, and any attempt to do so gives rise to a cause of action in favor of those who may be injured thereby.

"The rule is well settled that, in the declaring and paying of dividends, directors of a corporation have no legal right to discriminate between stockholders of the same class, but all are entitled to participate equally in the distribution of the net profits, unless otherwise provided by the terms of their contract with the corporation. Discrimination in the payment of dividends as between stockholders of the same class is not within the discretion of the officers of the corporation. And, since a person holding as owner the stock of a corporation becomes thereby entitled to a proportionate share in the profits of the company, a duty is imposed by law on the corporate body of a company to distribute all dividends which from time to time may be declared ratably on all the capital stock; and from this duty springs an implied promise upon the part of the corporation to pay a particular stockholder the same rate of dividends which it has declared to the other stockholders, which duty, it has been held, may be enforced in an action of assumpsit.

"Majority stockholders have no right to distribute or divide corporate assets to the exclusion of minority stockholders."

**13 Fletcher on Corporations, Section 5785**  
**Southern Pacific Co. v. Bogert, 250 U.S. 483;**  
**Jones v. Foster, 70 Fed. (2d) 200, Certiorari**  
**denied in 293 U.S. 558; 79 Law Ed., 659.**

The Circuit Court of Appeals, in its opinion, gave great weight to the fact that there was no fraudulent conduct on the part of the directors. (**Opinion, Court of Appeals, Record 444**). Neither fraudulent conduct, nor willful mismanagement are necessary to give cause to a right of action, where the rights of the stockholders are involved, and the Court so held in *Southern Pacific Co., vs. Bogert*, *supra*, at page 492 of the opinion.

"In seeking to prevent the carrying out of the contract, the suit was directed not only against the Power Company but against the Authority and its directors upon the ground that the latter, under color of the statute, were acting beyond the powers which the Congress could validly confer. In such a case it is not necessary for stockholders—when their corporation refuses to take suitable measures for its protection—to show that the managing board of trustees have acted with fraudulent intent or under legal duress. To entitle the complainants to equitable relief, in the absence of an adequate legal remedy, it is enough for them to show the breach of trust or duty involved in the injurious and illegal action."

**Ashwander vs. Tennessee Valley Authority,**  
**297 U.S. 319; 80 Law Ed., 696.**

We have here not only the relationship of corporation and stockholder, which is one of a fiduciary nature,

but we have what is, in effect, interlocking directorates and managements. While the identity of the board of directors of the Land Bank and the Farm Loan Association are different, they are both under the general supervision of the Farm Credit Administration, which exercises an equal, if not greater, control over both than the interlocking directorates of different corporations.

The Federal Farm Loan Act, under which the Land Bank and the Farm Loan Association are chartered, provides:

"Its administration shall be under the direction and control of the Farm Credit Administration."

**12 U.S.C.A. Section 641.**

The extent to which this supervision has been exercised is evidenced by the fact that the plan under attack was recommended by the Farm Credit Administration, and approved by it prior to the time the plan was approved by the Bank.

The Courts have gone far in protecting the rights of stockholders under similar situations. As to the debtor creditor relationship, the presumption is in favor of the acts of the directorate, but as to corporations dealing with its stockholders, and particularly where there are interlocking interests, the presumption is against the fairness of the transaction, and the burden of proof is upon the corporation to show that the transaction is absolutely fair and free from fraud.

"The relation of directors to corporation is of such a fiduciary nature that transactions between boards having common members are regarded as

jealously by the law as are personal dealings between a director and a corporation, especially where a common director is dominating in influence or in character; and, where the fairness of such transactions is challenged, the burden is on those who would maintain them to show their entire fairness and full adequacy of consideration for any sale involved therein. *Geddes v. Anaconda Copper Mining Co.*, 41 S. Ct., 209 254 U.S. 590, 65 L. Ed., 425, reversing 1917, 245 F. 225, 157 C.C.A. 417, which affirmed, D.C. 1915, 222 F. 129."

"The relation of directors to corporations is of such fiduciary nature that transactions between boards having common members are regarded as jealously by the law as are personal dealings between a director and his corporation, and, where fairness of such transactions is challenged, burden is on those who would maintain them to show their entire fairness, especially where a common director is dominating in influence or in character. *First Trust & Savings Bank v. Iowa-Wisconsin Bridge Co.*, 98 F. 2d 416, affirming, *D. C. Bechtel Trust Co. v. Iowa-Wisconsin Bridge Co.*, 19 F. Supp. 127, and certiorari denied *Phoenix Finance Corporation v. Iowa-Wisconsin Bridge Co.*, 59 S. Ct. 243, 305 U.S. 650, 83 L. Ed. 420, rehearing denied 59 S. Ct. 356, 305 U.S. 676, 83 L. Ed. 437."

"Transactions between corporation boards having common members are jealously regarded, and where fairness of such transactions of such boards is challenged, burden is on those who maintain them to show their entire fairness, *Raymond-Eldredge Co. v. Security Realty Inc., Co.*, 91 Fed. 2d. 168."

"Where agreements are entered into between common directors of a corporation and banks of

which such directors are officers or representatives, the burden of showing the agreements to be fair and absolutely free from fraud rests on him who seeks to uphold the transaction. *Irving Bank-Columbia Trust Co. v. Stoddard*, 292 F. 815."

"Contracts between corporations having common directors, while not prohibited, are voidable; and the burden rests on those seeking to sustain them to show clearly that they were entirely fair and free from wrong. *Geddes v. Anaconda Copper Mining Co.*, 245 F. 225, 157 C.C.A. 417, affirming *D. C.* 1915, 222 F. 129, and reversed 41 S. Ct. 209, 245 U.S. 590, 65 L. Ed., 425."

**19 Federal Digest, p. 402.**

"Common directors and managers occupy fiduciary relations toward both corporations, and contracts between them will be carefully scrutinized. *Wentz v. Scott*, 10 F. 2d. 426."

**19 Federal Digest, p. 402.**

Even where there are no interlocking interests, the Courts have consistently, and without exception, held that the directors and officers of a corporation stand in a strictly fiduciary relation towards its stockholders, and are accountable to them on the principles governing that relationship.

*McCourt vs. Singers-Bigger*, 145 Fed. 103;  
*Ashman v. Miller*, 101 Fed. (2d) 85;  
*Dunnett v. Arn*, 71 Fed. (2d) 912;  
*Backus v. Finklestein*, 23 Fd. (2d) 357

The principles involved here vitally affect not only the petitioners and other stockholders of the Federal Land



Bank of Louisville, but the whole future of the economic structure of this country.

It is a matter of history, that prior to the opinion of Chief Justice Marshall, in *Head & Armory v. The Prudential Life Ins., Co.*, supra, there were but few corporations, and these were, for the most part, closely held. The public was reluctant to invest its funds in any enterprise where their investments would be subject to the will of the majority. The rights of the stockholders have been consistently protected by the Courts by what is frequently referred to in the decisions as the "maintenance of corporate integrity." Even the slightest departure from the well-established rules which protect the rights of stockholders is exceedingly dangerous, and would, most surely, affect the confidence of the investing public in corporate stocks. Many corporations, and particularly commercial banks, are frequently confronted with the same situation as is involved in the case at bar. For example, in the town where the offices of petitioner is located, there is a commercial bank that has as one of its stockholders a man engaged in the automobile business, who, when new cars are available, discounts notes to the bank amounting to from \$100,000 to \$200,000 annually, and results in an income to the bank of from six to twelve thousand dollars annually. This represents about one seventh of the bank's total income. If this stockholder should get in financial difficulties, and in excess of his assets be indebted to the bank in the sum of \$10,000.00, and other creditors in the sum of \$10,000.00, we would have a situation comparable to the case at bar, and, it would, undoubtedly, be to the best interest of the bank to keep this particular stockholder in business. However, we respectfully submit that it would be a fraud on other stockholders to expend the

sum of \$20,000.00 of the corporate assets to pay his just debts, even though his continued business would offset the expenditures in from two to four years.

The Circuit Court of Appeals in its opinion referred to the cases cited by the District Judge in support of his conclusions. These cases were lightly considered by the Circuit Court of Appeals, because that Court did not find the present controversy to be in the field of private corporate law. However, they were considered to some extent on the question of corporate powers, and we respectfully refer to them briefly.

**Atherton v. Anderson**, 86 Fed. (2d) 518, recognizes the right of corporate officers and directors to invest corporate funds to protect the value of its security until an advantageous sale can be made.

**National Bank v. Watson town Bank**, 105 U.S. 217, involves a transfer of stock where a third party was misled to its prejudice by the act of a corporate officer.

**Green Bay etc., R.R. Co., v. Union Steamboat Co.**, 107 U.S. 98, recognizes the right of a railroad company to contract with a connecting carrier to pay its losses in consideration of the business it furnishes.

**Henderson Tire & Rubber Co., v. Gregory**, 16 Fed. (2d) 589, holds that a corporation may enter into a contract of guaranty when reasonably incidental to its authorized business.

**Marbury v. Kentucky Union Land Bank Co.**, 62 Fed., (2d) 335, approves a contract of guaranty for the benefits of the corporation where the stockholder relationship is not involved.

**Lyon, Potter & Co., vs. First National Bank, 85 Fed., 120,** approves the endorsement of a note where the corporation received part of the proceeds.

**General Investment Co., v. Bethlehem Steel Corporation, 248 Fed. 303,** approves a guaranty agreement by the Steel Co., guaranteeing the bonds of a subsidiary company in the acquisition of property for the benefit of the Steel Co.

**Modoc County Bank v. Ringling, 2 Fed. ( wd) 535,** approves a guaranty agreement for the benefit of a depositor.

**Gotham National Bank v. Sharood, 23 Fed. (2d) 567,** holds that a promise of a National Bank which held title to goods as security to hold goods of a specified quality for a purchaser from debtor, was not ultra vires, since the bank was cooperating with debtor in the hope of liquidating its own claim.

**Allis-Chalmers Mfg. Co. v. Citizens Bank & Trust Co., Fed., (2d) 316,** approved a guaranty of \$20,000.00 claim secured by prior lien in order to protect a second lien securing over \$100,000.00.

**Dunn v. McCoy, 113 Fed. (2d) 587,** approves a contribution of \$12,500.00 by a national bank to a state bank where similar contributions were made by other banks in the same locality to prevent the state bank from closing.

**American Rolling Mill Co., v. Commissioner, 41 Fed. (2d) 314,** involves a controversy between a corporation and a tax collecting agency as to whether or not a contribution to civic improvement is deductible as a business expense.

Involving the same principle, is **Glassworks v. Lucas**, 37 Fed. (2d) 798, wherein the corporation had made a contribution of \$25,000.00 to the building fund of a hospital that would take care of its employees and enable it to avoid enlarging its dispensary facilities at the factory.

**Forbes Lithographing Mfg. Co. v. White**, 42 Fed. (2d) 287, involves a controversy between a corporation and a tax collecting agency as to whether or not a contribution to a foundation established to assist employees and dependents is deductible as a business expense.

**Heinz v. National Bank of Commerce**, 237 Fed. 942, approves the creation of a pension fund to be shared by the officers and employees. This case holds that in determining whether or not a given act is within the expressed corporate powers, the judgment of stockholders and directors has no legal weight or bearing, but that in determining whether a given act is within the implied corporate powers, the judgment of stockholders and directors is entitled to consideration, but is not conclusive.

None of the foregoing authorities involve the corporation-stockholder relationship, and none of the authorities support the proposed plan of the respondents, or any part thereof, unless the Bank is a competitive business enterprise. In that event, *Green Bay etc. R.R. Co., v. Union Steamboat Co.* supra, may be authority for establishing reserves to absorb future losses of associations.

If this Court should find that the Land Bank is a competitive business enterprise, and that the reserves are justified, petitioners are still entitled to their relief for the other disbursements in the form of cash and cancellation of credits, totalling \$2,500,000.00.

The cash payments totalling \$1,004,875.00, of which sum \$979,144.80 was paid by the Bank immediately prior to the commencement of this action, are to enable the Associations receiving the funds to satisfy the stock of their former borrowers (Answer, Record 63 to 67). These claims are evidenced by stock retirement certificates which provide "therefore, this certificate is issued to evidence the right of the above named person, after all obligations of said Association have been satisfied, to share in its net assets, together with other persons having similar rights on the basis of the number of shares held by each, and not to exceed the par value of said shares." (Exhibit, Record 143).

The respondents attempt to justify this expenditure of funds on two theories:

First, that it promotes the goodwill of the business, and

Second, that it is necessary to place the Associations receiving the funds for the benefit of their former borrowers in solvent condition, so that they can be consolidated with other Associations, under the reorganization plan.

As to their first theory, the Associations can receive no benefit from this fund because it comes to the Associations irrevocably earmarked and must be paid to former borrowers who have liquidated their loans and are not prospects for future loans any more than any one of the several million other American farmers.

If, by stretch of the imagination, it can be assumed that there is a small tangible benefit passing to either the Association or the Federal Land Bank for this expenditure of funds, it is infinitesimal as compared to its cost.

The sum of \$1,004,875.00 is paid to 127 Associations, as shown by Exhibit 64, Record 349 to 381.

A few of these disbursements are as follows:

Association	Amount of Land Bank Stock Owned	Amount Re- ceived Under the Plan	Record Page
Elk Hart County .....	\$134,000.00	\$64,000.00	357
Grant County .....	55,320.00	27,580.00	357
Boone County, Group 1...	39,685.00	28,170.00	361
Western Indiana .....	34,480.00	21,710.00	363
Graves County .....	13,675.00	11,000.00	367
Columbia .....	5,125.00	6,875.00	369
Wayne County .....	7,085.00	5,918.00	373
Perry County .....	3,415.00	3,910.00	377
Maury County .....	24,005.00	16,150.00	377
Rhea County .....	6,565.00	14,542.00	379

These are only a few of the 127 stockholders who received for the benefit of their former stockholders the equivalent of a cash dividend on their stock in the corporation, amounting to from 50% to 225%. At the same time the petitioners and the 303 other Associations in Classes 1 and 2 in the Fourth Farm Credit District received nothing.

As to the respondents' second theory that these payments are necessary to place the receiving Associations in solvent condition so that they can participate in the consolidation plan, this is answered by the terms of the participating, or stock retirement certificates. (Exhibit, Record 143). The status of the former borrower is not changed. He is still a stockholder and the payment of his stock has only been delayed until such time as the Association may have sufficient assets to pay him, along with the others, in the same situation. He is, in no sense of

the word, a creditor of the Association, since a stockholder is not, by virtue of the fact that he owns stock, ever a creditor of the corporation.

**Thompson on Corporations, Section 4474.**

In the case of **In Re Phoenix Hotel Co. of Lexington**, 83 Fed. (2d) 724, at 726 (Sixth Circuit), the Court said:

"It is a fundamental rule of corporation law that one cannot be at the same time both a stockholder and a creditor of a corporation in respect to the same funds hazarded in the corporate enterprise."

In addition to the cash payments as aforesaid, the Land Bank proposes to cancel indebtedness against 152 of its stockholders, amounting to \$1,840,000.00 (Exhibit, Record 349 to 381). A few of the Associations who will receive benefits in the form of cancellation of debts are as follows:


Association	Amount of Land Bank Stock Owned	Amount due Bank and to Be Cancelled	Record Page
Morrow County .....	\$ 8,605.00	\$18,871.00	351
Brown County .....	5,185.00	10,451.00	355
Elk Hart County .....	134,120.00	253,762.00	357
First Whitley, Group 1.....	60,305.00	96,975.00	357
Jay County .....	18,625.00	52,692.00	357
Eastern Indiana .....	12,225.00	15,481.00	359
Scotsburgh .....	13,955.00	62,355.00	359
Neils Creek .....	1,495.00	11,519.00	359
White County .....	6,020.00	68,012.00	361
White River .....	25,445.00	71,008.00	365
Center Township .....	790.00	7,281.00	365
Greene River .....	24,915.00	45,304.00	367
Weakley County .....	15,145.00	29,534.00	375

These 13 Associations received from  $1\frac{1}{2}$  to  $9\frac{1}{2}$  times the amount of the stock owned by them in the form of forgiven indebtedness, while the other 280 Associations in the District received nothing.

The Center Township Association with \$790.00 par value of Land Bank Stock has furnished the Bank loans totalling 20 times that amount, or in the amount of \$14,800.00.

There is nothing in the record to indicate that the goodwill of this Association is worth the sum of \$885.00 to be paid in cash and the cancellation of an indebtedness amounting to \$7,281.00.

The goodwill of any business enterprise that has been operated on a basis as unsound as the Associations who have permitted themselves to get in such difficulties, can have no value.

In considering the value of the goodwill of the Associations, the Court below overlooked the fact that under the plan these Associations exist only until solvency is accomplished, and then became nonexistent, losing their corporate identity, their officers and directors, and even losing their assets which become a part of the consolidated Associations (Record 281 to 296). The goodwill of a corporation can have no value today, if it is to surrender its Charter and become nonexistent tomorrow. 

In considering the question of goodwill, the Court below further overlooked the fact that neither the Land Bank nor the Associations are competitive business institutions. Goodwill has been defined as "something in business which gives reasonable expectancy of preference in 'a race of competition'."



It is not the purpose of the Federal Farm Loan Act to encourage borrowing, or to engage in a race of competition with private lending agencies, but rather it is to afford a remedy for farmers in financial distress. It is apparent, from an examination of the Federal Farm Loan Act, that it was the intention of the Congress to afford credit to farmers at reasonable rates, but not on a competitive basis, and we seriously doubt that opposing counsel would insist that the Land Bank is engaged in a competitive business.

It is insisted by respondents that this expenditure of funds is necessary to extricate the Land Bank from a perilous situation, and to create confidence in the Land Bank business.

It is, undoubtedly, true that in recent years the amount and number of loans of the Federal Land Bank, and for that matter, of all other lending institutions, have been substantially reduced. This is the natural result of economic trends, and there is nothing in the record to indicate to the contrary. As of December 31st, 1943, respondent, the Federal Land Bank of Louisville, had an earned surplus of \$12,616,141.94, a legal reserve of \$11,338,700.00, and reserves against specific assets amounting to approximately \$4,000,000.00. This does not indicate that it is in any grave peril. It has lost, and will continue to lose small amounts from time to time. However, the proposed plan is not a salvage proposal to recover on losses heretofore incurred, and which may be incurred in the future, but it is an outright gift, based solely upon the needs of recipients. The disbursements are not based on the stock held by the receiving Associations (**Record 111**), and they are not to be repaid (**Record 111**).

Every borrower who has dealt with Farm Loan Associations since their beginning has done so with full knowledge that Congress provided for the withholding of stock proceeds in the event of insolvency of the Associations, and provided for the liquidation of insolvent Associations. It also held out to borrowers as stockholders of the Associations, the promise that their Associations would be rewarded for diligent management, not only by the repayment of stock proceeds, but by the payment of dividends from the earnings, of the corporation. The Federal Farm Loan Act provides:

"After deducting the 50 per centum or the 10 per centum, etc., \* \* \* directed to be deducted for credit to reserve account by section 901 of this title, any Federal Land Bank may declare a dividend or dividends to shareholders of the whole or any part of the balance of its net earnings, \* \* \*."

**12 U.S.C.A. Section 902a.**

"After deducting the 10 per centum or the 5 per centum directed to be credited to reserve account, said association may at its discretion declare a dividend to shareholders of the whole or any part of the balance of said net earnings, provided, etc., \* \* \*."

**12 U.S.C.A. Section 913.**

In spite of the splendid financial condition and a large surplus, respondent, The Federal Land Bank of Louisville, has not paid a dividend on its stock since 1930 (**Exhibit Record 392**).

To not only repudiate the promise held out to borrowers by the Statute, but to completely reserve the matter

by rewarding the careless at the expense of the more diligent would be far more apt to destroy confidence than the liquidation of a few Associations which, through either their own mismanagement or the misdirection of the Farm Loan Administration, have become hopelessly insolvent.

Congress anticipated such a condition as exists in many of the Associations at the present time and provided the remedy which will be discussed later. If it had been the intention of Congress that either the Farm Credit Administration, or the Federal Land Bank should deal with insolvent Associations as they saw fit, it would have said so. There is nothing in the Act from which such authority can be implied.

In addition to the cash payments and the cancellation of the indebtedness heretofore discussed, the Bank proposed to set up reserves for anticipated future losses of the Farm Loan Associations—all of which are its stockholders, amounting to \$620,333.00 (**Exhibit 345**). Any Association showing a need for such a reserve may share in these benefits. However, it is not on a "stock ownership basis," and is, in effect, the forgiveness of an anticipated future debt. The agreements to set up these reserves are definite commitments (**Exhibit, Record 56; Exhibit 59; Exhibit, Record 63; Exhibit, Record 67**).

These funds are earmarked for this particular purpose. Whether any of them will ever be returned to the assets of the defendant Bank is dependent upon the amount of the losses actually sustained by the Associations for which the reserves are set up. General economic conditions and other factors will determine the extent of the use of this fund. There is no present consideration, either tangible

or intangible, for this feature of the plan, and it is not even insisted by defendant that it could, in any way, effect a consolidation of Associations and the reorganization of the Fourth Farm Credit District.

The Circuit Court of Appeals held that the stock redemption certificates are clearly a debt which must be considered in determining the solvency of the Associations, and it is, apparently, upon this holding that its approval of the cash payments is predicated.

The Court should have held that the payment by the corporation of the sum of \$1,004,875.00 to one-third of its stockholders to be used by them in retiring such certificates was authorized and invalid, and was not necessary to reorganize and consolidate Associations. When a stockholder in the Association pays his loan to the Federal Land Bank and his stock proceeds are withheld because of the insolvency of his Association, he is issued the certificate hereinbefore referred to (**Exhibit, Record 143**), which gives him the right to share in the net assets of the Association. This does not change his status from that of a stockholder to a creditor, but even if the instrument could be construed as effecting such a change, it is not an obligation which affects the solvency of the Association which issues it. Whether the Association issuing the certificate surrenders its Charter, is liquidated or consolidated with other Associations, it loses its identity, and the right of the certificate holder becomes fixed and is to be determined by the net assets available at that time for payment under the terms of the contract. That is not an advancement for future salvage, because it is not contemplated that there will be any return to the Association or Land Bank of any part of the original fund (**Record 111**), much less any addition thereto. It cannot involve the element of good

will, for such payments are to Associations, that become non existent under the consolidation plan, and the funds are immediately paid to borrowers who have paid their loans in full.

In attempting to justify their position, respondents attempt to distinguish between, "stock proceeds withheld and unapplied," and "stock proceeds applied" (**Exhibit, Record 345**). These can be nothing more than bookkeeping terms. The stock has been cancelled and the proceeds are a part of the corporate assets, regardless of what they may be called, or in which pocket they may be kept. However, if we make the distinction which the respondents would like for the Court to make, there is still \$265,000.00 which has been "applied" (**Exhibit, Record 345**). And the expenditure of this sum cannot be justified, even if the theory of the respondents is adopted by this Court.

The proposed consolidation plan could be effected by a strict compliance with the Federal Farm Loan Act without the expenditure of funds and the cancellation of debts of its stockholders, and without losing any of the benefits claimed for the plan.

The District Court held that the applicable statutes are permissive rather than mandatory, and do not constitute the exclusive method of dealing with the situation. (**Opinion, District Court, Record, 415, 416**). This holding was affirmed by the Circuit Court of Appeals, Record 447, 448.

The Court should have held that the expression of one thing, or mode of action in the Statutes under which the Land Bank operates, excludes any other. The applicable Statutes are as follows:

"Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Farm Credit Administration may forthwith declare such association insolvent and appoint a receiver, etc., \* \* \*."

**12 U.S.C.A. Section 961.**

"Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description, and that it will be to the best interests of its creditors and stockholders for the association to continue in business, the Farm Credit Association may, in its discretion in lieu of appointing a receiver as provided herein, appoint a conservator for such association and require of him such bond and security as the Administration may deem proper. \* \* \*."

**Title 12 U.S.C.A. Section 967.**

The foregoing Statutes contain the only provision for the handling of insolvent associations, and no other authority is given in the powers granted by Congress to Federal Land Banks which are enumerated in Title 12, U.S.C.A., Section 781.

Section 967, *supra*, providing that "in lieu of appointing a receiver," a conservator may be appointed, clearly indicates an intention on the part of the Congress that this shall be the only alternative remedy, or mode of procedure. This construction is strengthened by the further provisions of the Federal Farm Loan Act which makes provisions for the continuance of the Farm Loan service in the territory of the Association, when, by reason of insolvency, it is

no longer able to take obligations and make loans. It provides as follows:

“\* \* \* The boundaries of the territory designated in the Charter of any national farm loan association may be readjusted from time to time to meet the farm loan needs of the locality as determined by the Farm Credit Administration.”

**Title, U.S.C.A. Section 719.**

“Whenever it shall appear that the capital stock of a national farm loan association is impaired, the Farm Credit Administration may authorize the Federal Land Bank of the District in which such association is located to make loans to applicants through such association, subject to the requirements and conditions specified for direct loans in paragraphs 12 to 16, etc., \* \* \* \*”

**Title 12, U.S.C.A. Section 724.**

Under the foregoing Statutes, the Federal Land Bank can extend the territory of solvent farm loan associations so as to include that territory occupied by insolvent associations, and it has authority to continue loan services in the meantime.

In construing these Statutes, and in giving them the meaning which Congress intended, the general rules approved by this Court are applicable.

The primary rule in construing statutes is to ascertain and give effect to the legislative intention.

**Fidelity & Deposit Co. v. Arenz, 290 U.S. 66,  
78 Law Ed., 176.**

Courts must give effect to the intent of Congress manifested in the Statute.

**U.S. v. Scharton**, 285 U.S. 518, 76 Law Ed., 917;  
**Croson v. District of Columbia**, 2 Fed. (2d.) 924.

Statutes will not be construed so as to lead to unjust oppressive or absurd consequences, or to self-contradiction.

**Northern Pacific Railroad Co., v. U.S.** 213 Fed. 162, affirmed in 242, U.S. 190; 61 Law Ed., 240.

A construction of the statute which would sanction an evasion of the whole policy of the law ought, in no case, to be adopted unless the natural meaning of the words of the Act require it.

**The American Fur Co., v. U.S.** 2 Peters (358);  
7 Law Ed., 450;

**Piper v. Willcuts**, 64 Fed. (2d) 813.

Courts should, if possible, construe statutes so as to produce a harmonious and consistent result.

**In Re: Bank of New York**, 278 U.S. 101,  
73 Law Ed., 202.

The foregoing rules of construction have been applied in **Greene v. Wheeler (Seventh Circuit)**, 29 Fed. (2d), 468, wherein the Court, in referring to the National Farm Loan Act, said:

"The act shows that it was anticipated that there would be cases of insolvency and failure; that in such cases the association or bank would



cease to function normally; that, if creditors were to be protected and debtors compelled to meet their obligations, some agency, other than the bank or the association, would have to intervene."

**Greene v. Wheeler, supra.**

It will be insisted by the respondents that a strict application of the Statute would prevent consolidation. In this connection, we respectfully call the Court's attention to the map which appears in the record as an Exhibit (Record 73), and particularly that part of the map showing Jefferson County, Kentucky. It is proposed that the associations of Jefferson, Bullitt, Spencer and Nelson Counties be consolidated into one association, and that each of these associations would cease to exist as a corporate entity. To accomplish this, and in strict compliance with the Federal Farm Loan Act, it is immaterial whether either or all of these associations are solvent. If one or more is solvent, under Section 719, *supra*, its territorial limits can be extended to include the territories served by other associations. If all are insolvent, one, or all of them may be liquidated and a new association formed to serve this territory.

The District Court should have held that the doctrine of *expressio unius est exclusio alterius* applied.

"The expression of one thing or mode of action in a statute excludes any other, though not prohibited by negative words."

**Fidelity & Casualty Co. of New York v. Allen,  
84 Fed. (2d) 53; (Seventh Circuit).**

"The statute limiting a thing to be done in particular mode includes the negative of any other mode."

**Martin v. Commissioner of Internal Revenue,  
61 Fed. (2d) 942 (Second Circuit).**

When the Congress provided for a receivership and liquidation of insolvent Associations, Section 961, *supra*, and provided "in lieu thereof" for continued operation under a conservator, Section 967, *supra*, it closed the doors to any other plan of dealing with the situation. The only matter in which the Farm Credit Administration, or the Land Bank were given any discretion was in determining when the condition of insolvency had reached the extent that one or the other of those remedies was required.

It certainly was not the intention of the Congress to give either the board of directors of the respondent Bank, or the Farm Credit Administration discretion in the use of corporate assets which could, or would, involve expenditures of corporate assets to any stockholder or group of stockholders to the exclusion of others with equal rights.

Since there is no authority, under the Act, for making such disbursements, they are, in effect, dividends. The relationship existing between a corporation and its stockholders is one of trust, as hereinbefore discussed, and the dealings between them must be at arm's length.

No matter what the dealings may be called by the corporation and directorate, when the rights of the stockholders are involved, the transactions between them must be construed according to their legal effect.

**Wolter v. Johnston, 34 Fed. (2d.) 597.**

Since corporations have no right to distribute their assets to stockholders, except in the payment of dividends, a division of profits to stockholders amounts to a construc-

tive dividend, whether it is intended by the directors or stockholders to constitute a dividend or not.

**Fletcher on Corporations, Section 5318;**  
**Hadley v. Internal Revenue Commissioner,**  
**36 Fed. (2d.) 543;**

**Savings Bank v. Brewer, 17 Fed. (2d) 79.**

**Annotations in L.R.A. 1918 B. pp. 1051 and 1052,**  
from which we quote, as follows:

"Where all the stockholders of a solvent corporation at their annual meeting agreed to 'charge off' certain real estate of the company with the understanding that it was to be conveyed to the stockholders, and it was so conveyed, this constituted a dividend. *Grants Pass Hardware Co. v. Calvert* (1914), 71 Or. 103, 142 Pac. 569."

**Ann., L.R.A. 1918 B, p. 1051.**

"In *Smith v. Moore* (1912), 118 C.C.A. 127, 199 Fed. 689, money taken by a controlling stockholder from a corporation through many years were considered as dividends, and a purchase of his ward's stock by him as guardian having been set aside as illegal, he was compelled to account to the owner of such stock for its proper proportion of such moneys as dividends. The court said: 'While it is true that in general a corporation is a distinct entity from its stockholders, nevertheless, where an individual owns practically all of its stock and controls all of the operations of the corporation, they are, in proper case, regarded by the courts as one and the same. . . So may a court of equity, which always looks through the form to the substance of

things, avoid the necessity of driving a wronged party to a circuitry of actions, and treat as dividends all amounts received in consequence of a division of the profits of the corporate business, as the court below directed the master to do, and as he did do, as shown by his report, confirmed by the trial court.' The court below said *inter alia*: 'A division of the profit without the formality of declaring a dividend is equivalent to declaring a dividend, and such division of the profits is a dividend, even though not called such and not considered such by the directors and stockholders'."

**Ann., L.R.A. 1918 B, p. 1051.**

"While the formal way of transferring profits to a corporation's only stockholder is by the declaration of a dividend, if the corporation turns over its profits to the stockholder without this formality the transaction is good, and may not be attacked where the act does not impair the rights of third parties. *Central of Georgia R. Co., v. Central Trust Co.* (1910), 135 Ga. 472, 69 S.E. 708."

**Ann., L.R.A. 1918 B, p. 1052.**

"In *Hartley v. Pioneer Iron Works* (1905), 181 N.Y. 73, 73 N.E. 576, it was said that a 'division of profits without the formality of declaring a dividend is the equivalent of declaring a dividend.'"

**Ann., L.R.A. 1918 B, p. 1052.**

If this Court should be of the opinion that the foregoing authorities do not establish conclusively the legal right to so hold, there is no doubt but that this Court has equitable jurisdiction to hold that said payments constitute

a dividend. There is no legal right to distribute assets to stockholders except (a) as compensation for services; (b) compensation for property, or (c) as dividends. There is not even the slightest intimation that the disbursements are compensation for either services or property. One of the maxims that is a component part of equity jurisprudence would require the Court to hold that the payments are, in effect, dividends, for that is the only legal way it could have been done. The maxim is that "equity regards that as done which should have been done."

The respondent Bank has paid approximately \$1,000,000.00 in cash to 151 of its stockholders who own  $2\frac{1}{4}$  million dollars of its capital stock. On this basis, a similar dividend to the remaining 281 stockholders, owning six million dollars of its capital stock, amounts to  $2\frac{1}{2}$  million dollars.

It is not the intention or desire of the petitioners to, in any way, impair the capital structure of the Land Bank. As a matter of fact, it is the primary purpose of this suit to protect and maintain a strong corporate structure, and this can be done by making a proper distribution to all stockholders. After the payment of the dividends, as above suggested, and which both the directors and the Farm Credit Administration have, in effect, approved, the capital structure would be as follows:

Capital \$7,900,000.00; earned surplus remaining \$9,600,000.00; legal reserve \$11,300,000.00; making a total of \$28,800,000.00. These figures do not include specific reserves against assets amounting to more than four million dollars (Exhibit, Record 242). And more than one million dollars due from Associations carried as assets and not reflected in the published statement of condition (Record 111).

With \$113,600,000.00 in loans outstanding, the Bank would have to suffer a loss in excess of 25% to affect its solvency. According to past experience, including the worst economic depression this country has ever known, the average loss on loans in this District is less than 2%, and that amount, even during most of the depression years, was far exceeded by its earnings. Such a dividend would place all Associations in Class 2 in good condition, and would save approximately one-fourth of the Associations in Class 3 (Record 351, 381).

The record (pp. 351-381) shows the ones remaining are so hopelessly insolvent that they should be liquidated and the Charters of adjoining Associations amended so as to include their territories, as authorized by Section 719 of the Act. A substantial part of the dividends to Class 1 Associations are, by Statute, required to be placed to legal reserve so that they would be in stronger position and better able to absorb future losses. So that only a small amount, if any, of the future losses would ultimately be borne by the defendant Bank. Consolidation could then be effected and every savings anticipated under the proposed plan could be made without, in any way, conflicting with the Statute, and that is such procedure as the Statute contemplated. It is true this would leave some Associations to be liquidated, but that is a situation to be expected in any field of endeavor, and was contemplated by the Congress—otherwise the provisions for receivership and liquidation would not have been made in the Act. These are normal casualties of a business cycle. They are not the first, and neither will they be the last.

The petitioners and 280 other Associations and their stockholders have been diligent in the administration of

their affairs, and in the making of loans. Certainly they should not be penalized for their diligence. The payments in cash already made to the other Associations will constitute an unjust discrimination against petitioners and other stockholders in like situation, unless they receive similar amounts based upon the stock held by them.

It is insisted by the respondents that the petitioners and others in like situation have received gifts from the defendant corporation in the past under servicing resolutions and agreements, and are, therefore, estopped to challenge the action of respondents in this case. This contention is not supported by the record. It is specifically stated in the Stipulation of Facts (Record 100-101) that payments were made to Associations based upon the current number of loans outstanding, as compensation for services rendered by them, and that additional allowances were made based upon additional services by the Association.

Exhibit, Record 185, 186, sets out in detail the services performed by the Association under the agreement, and there is nothing in the record to indicate that the payments were excessive in view of the services rendered.

While the record does not sustain this contention, if it were true, the doctrine of estoppel would not be applicable.

The stockholders of the Federal Land Bank are, for the most part, farm loan associations, existing under the Statutes of the United States, and subject to the same rules relative to limitation of powers as the Federal Land Bank.

There is nothing in the Act creating these associations which gives them authority to agree to such a disposition

of the funds in which they have an interest, as that proposed by the respondents in this suit. And, any attempt, on their part, to enter into such an agreement would be *ultra vires*.

"A contract, if *ultra vires*, that is beyond the express or implied powers of the corporation cannot be made valid by the application of the doctrine of estoppel even though such contract is performed by the other party thereto, and although benefits have been received under it."

**American Jurisprudence**, pp. 823, 824.

"A contract made by a corporation beyond the scope of its powers, express or implied, on a proper construction of its Charter, cannot be enforced or rendered enforceable by the application of the doctrine of estoppel."

**California Nat'l. Bank v. Kennedy**, 167 U.S. 362, p. 371. 42 Law Ed., 198, at p. 201.

"A contract outside the scope of corporate powers is not voidable, but wholly void. It cannot be ratified because it could not have been legally made."

**People ex rel. v. State Bank**, 101 A.L.R. 514 (Ill.).

To the same effect, see **Central Transportation Co., v. Pullman Co.**, 139 U.S. 24; 35 Law Ed., 55.

"It is the well settled doctrine of this court that no right arises on an *ultra vires* contract, even though the contract has been performed; and that this conclusion cannot be circumvented by erecting an estoppel which would prevent challenging the legality of a power exercised."

**Texas & R.P. Co. v. Pottorff**, 291 U.S. 245, p. 260;



**In McCormick v. Market Natl. Bank, supra, the Court, at p. 549 of 165 U.S. 41 Law Ed., 821, said:**

"The doctrine of ultra vires, by which a contract made by a corporation beyond the scope of its corporate powers is unlawful and void, and will not support an action rests, as this court has often recognized and affirmed, upon three distinct grounds: the obligation of anyone contracting with a corporation to take notice of the legal limits of its powers; the interest of the stockholders, not to be subject to risks which they have never undertaken; and above all, the interest of the public, that the corporation shall not transcend the powers conferred upon it by law."

**McCormick v. Market Natl. Bank, supra.**

**In Colley v. Chowchilla Natl. Bank, 52 A.L.R. 569** (Supreme Court of California), there was involved a release of notes due a National Bank in consideration of the assignment by the maker of an interest in real property to another bank. After discussing and approving the general rule, that a consideration for a release moving from the release to a third person at the request of the releasor is an adequate consideration, the Court, at page 573 of the opinion said:

"But, notwithstanding the above set forth principle, we must here deal with a corporation whose powers are circumscribed by the statutes of the United States. In short, we have as the alleged releasor a national banking association, which has, in practical effect, agreed to give a satisfaction of the debt without special benefit of any kind to itself. The legal consequence of the promise as found by the court is that the corporation has covenanted to make a gift to its capital

assets for the doing of an act, detrimental to the doer, it is true, but without benefit to itself, and beneficial only to a third party whose connection, if any with appellant does not appear from the record. In other words, may a national bank under its powers as defined by the law be held to such a covenant? Appellant insists that such a contract, if proved, would be ultra vires the power of the corporation, and we think this contention must be sustained."

*Colley v. Chowchilla Nat. Bank, supra, p. 573.*

Even if the Association had authority to prejudice the rights of their stockholders by acts upon which an estoppel could be based, there are no facts to support this insistence. Petitioners were diligent in asserting their rights. The plan was approved for submission to the Association on July 19th, 1943, and declared effective by resolution of the Executive Committee of the Bank January 1st, 1944 (Record 107).

This suit was instituted on January 5th, 1944.

The importance of the rights of the stockholders in the Bank is evidenced by the fact that the Congress, in passing the Federal Farm Loan Act, saw fit to specifically provide that there should be no discrimination among them. The Act provides:

"The stock owned by the Government of the United States in Federal Land Banks shall receive no dividends, **but all other stock shall share in dividend distributions without preference.**"

(Underscoring ours.)

12 U.S.C.A. Section 694.

This Statute must be wholly ignored if the Bank's plan is followed. The resulting preference cannot be denied, and the fact that a Governmental agency is involved does not create either a distinction or a difference.

**In The Bank of United States vs. The Planters' Bank of Georgia, 9 Wheaton, 907, 908, the Court said:**

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. \* \* \* \* \* As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act."

**The Bank of the U.S. v. The Planter's Bank of Georgia, supra.**

### CONCLUSION

It is respectfully submitted that the opinion of the Circuit Court of Appeals is erroneous in the particulars hereinbefore set out. In view of the important issues involved not heretofore passed upon by this Court, and other issues which are in conflict with former decisions of this

Court, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

F. H. PARVIN,  
Counsel for Petitioners.

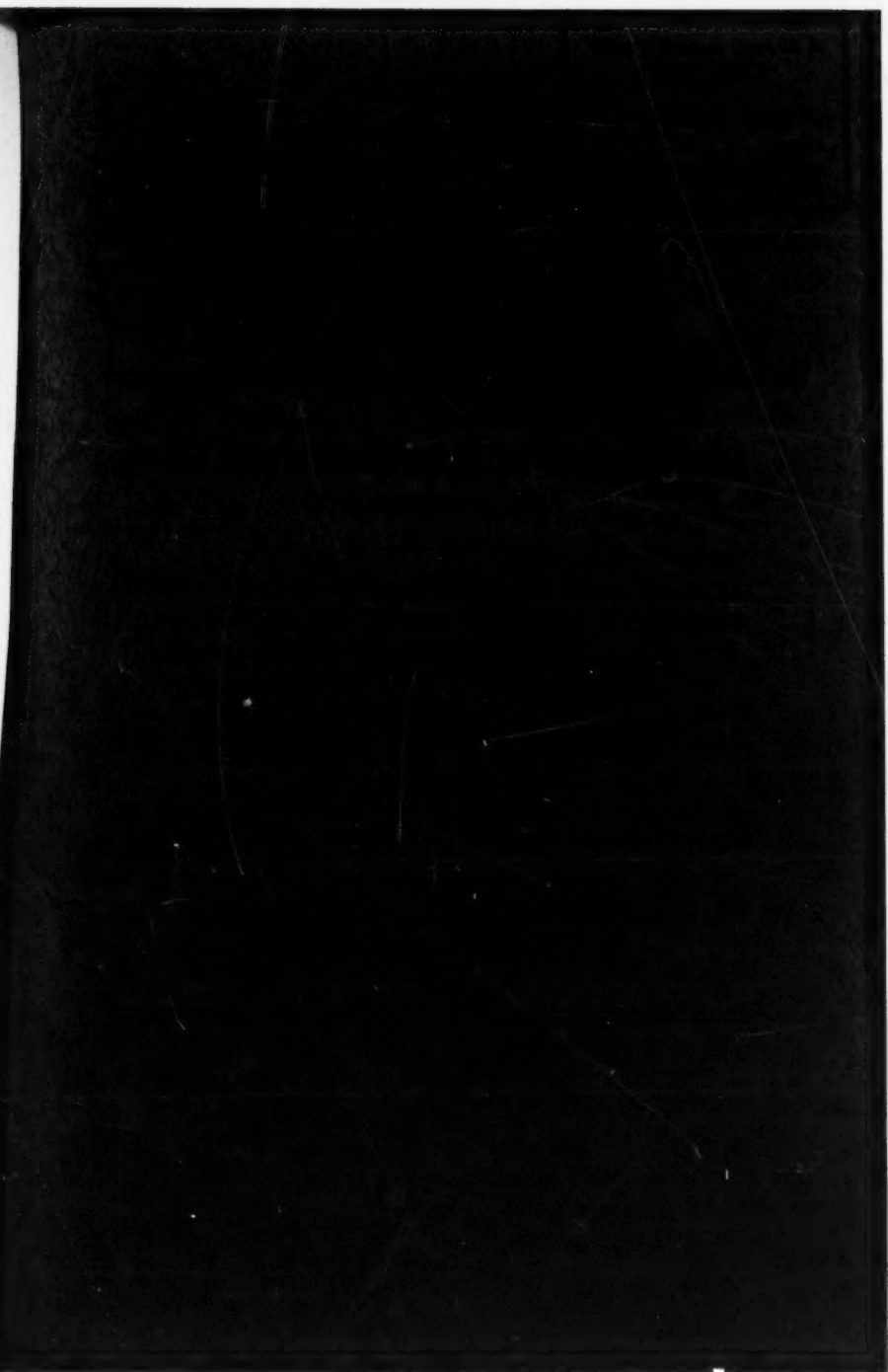
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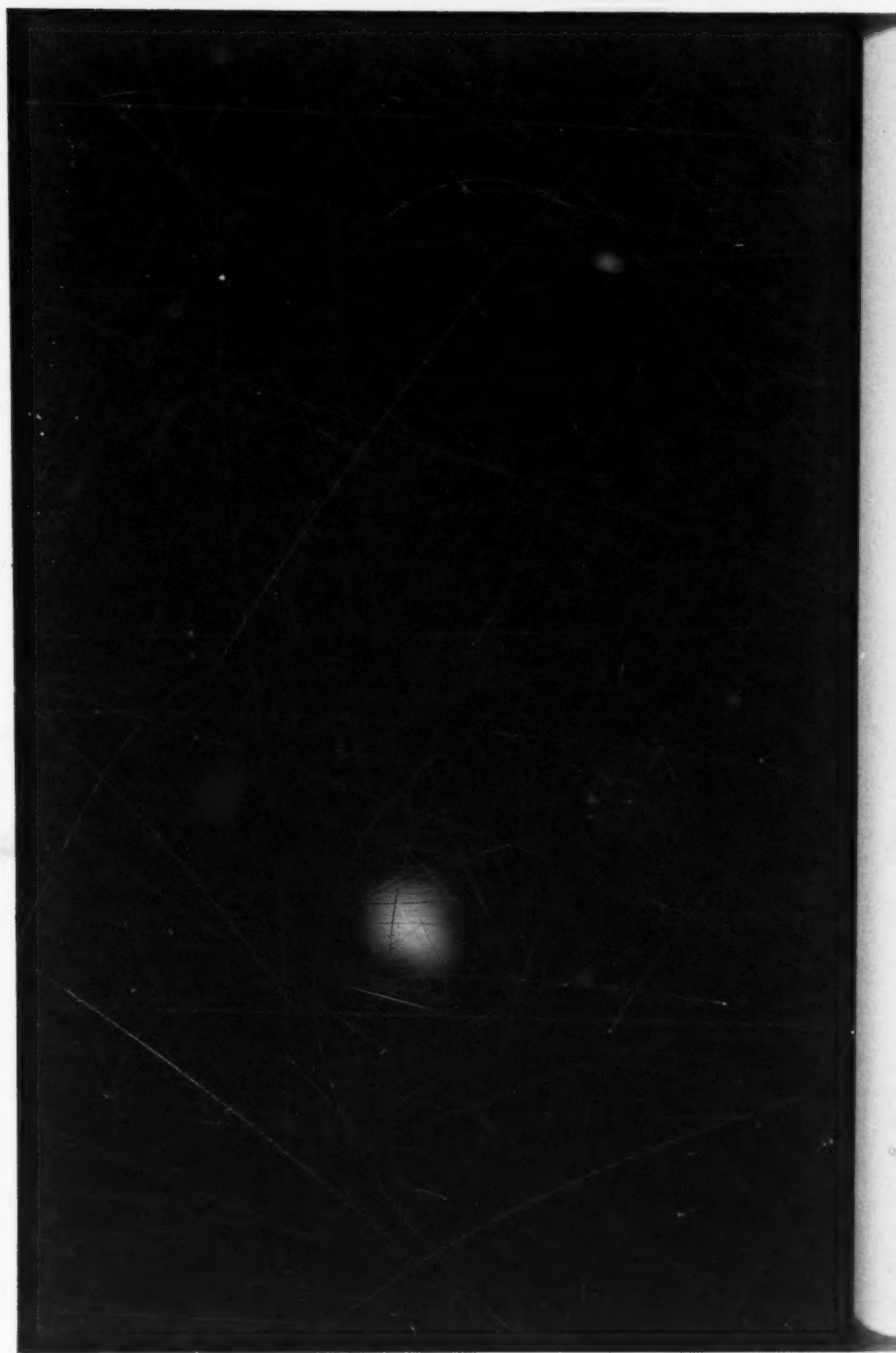
SUSONG, PARVIN & FRAKER,

Of Counsel for Petitioners.











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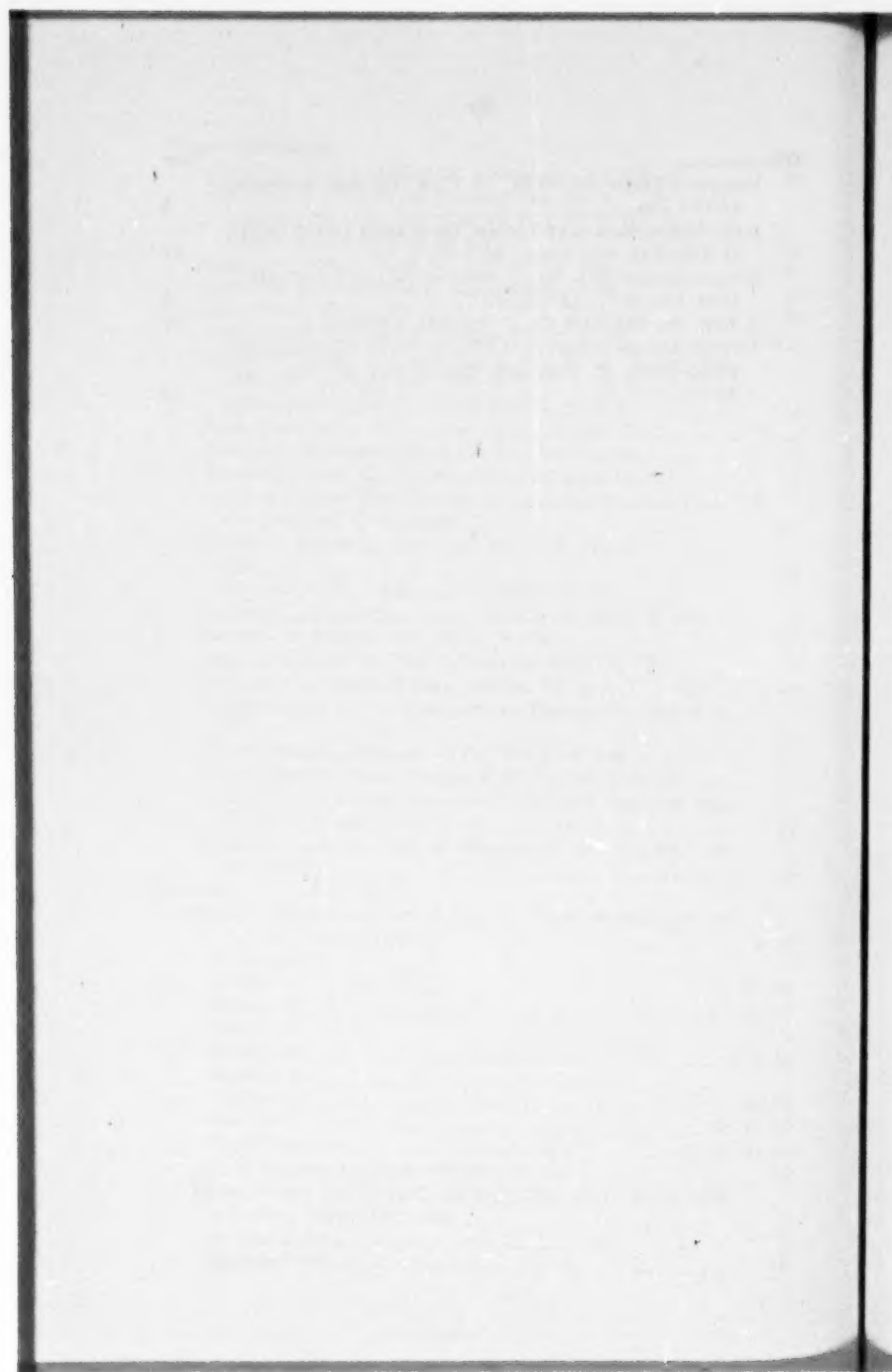
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# **In the Supreme Court of the United States**

OCTOBER TERM, 1945

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No. 934

**GREENE COUNTY NATIONAL FARM LOAN ASSOCIATION, HAMBLÉN COUNTY NATIONAL FARM LOAN ASSOCIATION, ET AL., PETITIONERS**

*v.*

**THE FEDERAL LAND BANK OF LOUISVILLE, ET AL.**

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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**BRIEF FOR THE RESPONDENTS AND THE UNITED STATES IN OPPOSITION**

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## **OPINIONS BELOW**

The opinion of the United States District Court for the Western District of Kentucky (R. 403-417) is reported at 57 F. Supp. 783. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 438-448) is reported at 152 F. 2d 215.

## **JURISDICTION**

The judgment of the circuit court of appeals was entered on December 13, 1945 (R. 437). The petition for a writ of certiorari was filed on

March 11, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTION PRESENTED

Whether the plan adopted by the directors of the respondent Land Bank, and approved by the Farm Credit Administration, for the rehabilitation and consolidation of the national farm loan associations in the farm credit district serviced by the Bank, involves an improper use of the Bank's corporate funds warranting the grant of equitable relief.

#### STATUTE INVOLVED

The statute involved is the Federal Farm Loan Act, as amended (39 Stat. 360, 12 U. S. C. 636, *et seq.*), the most relevant portions of which are set forth in the Appendix, *infra*, pp. 28-32.

#### STATEMENT

##### 1. THE NATURE OF THE CASE

This is a representative stockholders' action, originally commenced by petitioners and two other national farm loan associations located in the fourth farm credit district,<sup>1</sup> to enjoin the Federal Land Bank of Louisville (the Bank) and its

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<sup>1</sup> By resolutions of their respective boards of directors (R. 425-426, 426-427) two of the four original plaintiff associations disassociated themselves from this proceeding following dismissal of the action by the district court.

directors from putting into operation a plan, alleged in petitioners' complaint to involve an "illegal and misuse of corporate funds" of the Bank (R. 7), for the rehabilitation and consolidation of the national farm loan associations of the fourth farm credit district. Prior to the commencement of petitioners' action by the filing of a complaint on January 5, 1944 (R. 1-17), this plan had been approved by unanimous vote of the Bank's directors, by the Farm Credit Administration, and by over 80% of the fourth district farm loan associations (R. 344). Expenditures had been made by the Bank pursuant to the plan in the amount of \$979,144.80 (R. 26). With respect to this sum, which, under the provisions of the plan hereinafter detailed, had been paid to certain fourth district associations other than petitioners, petitioners' amended complaint (R. 18-19, 88-89) prayed that the Bank's directors be held personally accountable to the Bank, or, alternatively, that the Bank be required to pay an equalization dividend to the non-recipient associations.<sup>2</sup>

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<sup>2</sup> Prior to the amendment of the complaint seeking an equalization dividend, the complaint, upon an allegation that the Bank's financial condition was such that a dividend should be paid its stockholders, prayed that a mandatory injunction issue compelling the payment of a *pro rata* dividend to all stockholders (R. 8). No question, however, is here raised by petitioners concerning the district court's refusal to issue such process, nor did petitioners press for this relief in the district court (R. 417).

## 2. THE PARTIES

The complaint as first amended (R. 1-17, 18-19), was directed against the Bank, its directors, and the Farm Credit Administration. Upon motion (R. 75), granted by the district court, the Farm Credit Administration was dismissed as a party defendant on grounds of sovereign immunity (R. 76-77). The complaint was again amended by leave of court (R. 87) to include as defendants certain officials of the Farm Credit Administration (R. 88-89). Service of process upon these officials was not effected. On April 21, 1944, the United States filed its suggestion of interest in the matter (R. 79-85) and was permitted by the court to appear and participate in the proceedings (R. 86-87).

The petitioners and the respondent land bank for the fourth farm credit district are corporations, as are all Federal Land Banks and national farm loan associations, organized under the Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, 12 U. S. C. 636, *et seq.* Both land banks and associations are instrumentalities of the Federal Government providing the principal machinery for achieving the Act's objective—the making of long-term farm mortgage loans on reasonable terms to qualified owners or prospective purchasers of agricultural lands. *Smith v. Kansas City Title & Trust Co.*, 255 U. S. 180; *Federal Land Bank of Columbia v. Gaines*, 290 U. S. 247; *Fed-*



*eral Land Bank of St. Louis v. Priddy*, 295 U. S. 229; *Knox Farm Loan Ass'n v. Phillips*, 300 U. S. 194; *Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U. S. 95. The banks and associations are presently under the supervision of the Farm Credit Administration, herein referred to as the supervising agency, which is a part of the Department of Agriculture.<sup>3</sup>

The respondent directors of the Bank are selected in accordance with the provisions of the Act as amended by the Farm Credit Act of 1937, 50 Stat. 703, 12 U. S. C. 640 b-f, 677a, 1022, 1131, 1134. Three of the seven members of the board are appointed by the supervising agency or officials of that agency, and a fourth is chosen by the agency from persons nominated by the farm loan associations of the farm credit district involved. Of the remaining three directors, one is elected by the national farm loan associations of the district, and the remaining two are chosen by other credit instrumentalities operating in the district.<sup>4</sup> Together, these officials

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<sup>3</sup> The banks and associations were originally placed under the supervision of the Federal Farm Loan Board within the Department of Treasury, Section 3, 12 U. S. C. 652. The functions of the Board were transferred to the Farm Credit Administration, as an independent agency, by Executive Order No. 6084 (12 U. S. C., note preceding Section 636). The Administration was transferred to the Department of Agriculture by Reorganization Plan No. 1, Section 401, effective July 1, 1939 (5 U. S. C. 133t note).

<sup>4</sup> See, particularly, Section 5 (b) of the Farm Credit Act of 1937, 50 Stat. 704, 12 U. S. C. 640b.

constitute the district farm credit board and, by virtue of their membership on the board, become *ex officio* the board of directors of the land bank in the district involved. Act of 1937, *supra*, Section 7 (b), 12 U. S. C. 677a.

### 3. THE PLAN

*Background.*—Petitioners' stock interests in the Bank have been acquired—as have those of the other 432 fourth district associations existing at the time of adoption of the plan—solely as a result and in the course of their operations under the statutory scheme.<sup>5</sup> A farmer seeking a loan from the Bank's funds makes application for such loan, which under the Act must be secured by a first mortgage, through a national farm loan association operating in the designated subdivision of the farm credit district in which his lands are located.<sup>6</sup> As a required condition to the approval of his application under the Act he must

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<sup>5</sup> Petitioners hold approximately 5,000 shares or somewhat less than 0.4 of 1% of the Bank's outstanding stock of approximately 1,500,000 shares. Except for some 2,000 shares held by individual borrowers, the remainder of the stock is held by other fourth district associations (R. 149-151, 242).

<sup>6</sup> The farmer may borrow directly from the Bank only when his lands are located in an area not served by an association or where the association is insolvent and the Bank is therefore unable to accept applications from such associations. Section 7 as amended, 12 U. S. C. 723 (a). Such direct loans carry a higher interest rate than loans made through associations. 12 U. S. C. 723 (b).

agree to purchase shares of stock in the association at their \$5 par value in an amount equal to 5% of the loan amount. Section 8, 12 U. S. C. 731, 733. In turn, the association is required to endorse the farmer's mortgage note, made payable to the Bank, and also to devote the proceeds from the sale of its stock to the farmer to the purchase of an equal number of shares of the Bank's \$5 capital stock. Section 7, 12 U. S. C. 721. The stocks so acquired are automatically pledged as security for the loan—that of the farmer in the association to the association as security against the latter's endorsement liability on the loan, and stock of the association in the bank to the bank as security for repayment of the loan. These holdings are automatically retired upon repayment of the loan in full. The par value of the association's stock holding in the Bank thereupon becomes payable to the association, subject, however, to the right of the Bank to a set-off against the amount so payable for any indebtedness of the association to the Bank. In the absence of such indebtedness, the association pays the borrower the par value of his retired stock in the association. Where, however, the Bank has withheld from the association the proceeds of its retired stock, the association is unable to pay the borrower the par value of his original stock purchase in the association. Instead the association issues to the borrower a

stock retirement certificate giving the borrower the right to share, to the extent of his original stock subscription, in the net assets of the association after satisfaction of all other association obligations.<sup>7</sup>

Despite the adoption of numerous measures by the Farm Credit Administration and the land banks to strengthen the financial position of national farm loan associations (See R. 100-101, 102-103, 105-106), the capital stock of many of the fourth-district associations was materially impaired at the time of adoption of the plan. The principal indebtedness of the impaired associations is to the banks on account of losses on loans made through and endorsed by the associations, and to farmers upon outstanding stock retirement certificates issued under the circumstances above outlined (R. 40-42, 97). Under a scheme of classification outlined (at R. 98-99), in the stipulation of facts and in the evidence upon which the case was submitted, 46 of the 434 fourth-district associations were Class 4 associations (having a total impairment of capital) and an additional 83 associations were in Class 3 (associations unable to meet current obligations without material but not entire impairment of capital). Class 3 and

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<sup>7</sup> The mechanics of the loan transaction set forth in the foregoing paragraph are those prescribed by the Act, principally by Sections 7, 8, and 9 thereof (12 U. S. C. 721, 733, 745); see also R. 97, 101-102, 124, 135-136. Concerning the Bank's right of set-off, see *Knox Farm Loan Ass'n v. Phillips*, 300 U. S. 194.

Class 4 associations are unable to accept applications for loans because of their insolvent condition (R. 99).

At the time the plan was submitted for adoption, the chartered territory of 318 of the 434 fourth-district associations overlapped the territory of other fourth-district associations (R. 100), and, as above stated, the financial condition of 129 of such associations was materially impaired.

*Terms.*—In its essentials, the plan (R. 32-74) provides for strengthening the fourth-district association system by reducing, through consolidations, the existing 434 associations to 94 for the declared purpose of establishing "an economic field pattern of associations financially sound and able to extend the credit services contemplated by the Farm Loan Act" (R. 33). Under the principal features of the plan the Bank will (1) cancel the indebtedness of impaired associations to it, (2) pay to each of the impaired associations an amount sufficient to pay off at par value their outstanding stock retirement certificates, and (3) establish reserves for all associations, whether impaired or not, to the extent necessary to cover presently foreseeable losses. The total cost to the Bank is computed at \$2,575,175.51 and it is estimated that consummation of the consolidations proposed in the plan will result in a monetary saving to the Bank of approximately \$300,000 annually in operating economies—sufficient to absorb the entire cost of the plan over a period not exceeding

eight and one-half years. Under the plan, the Bank receives certain other monetary benefits and the agreement of the participating associations to the proposed consolidations (R. 64).<sup>8</sup>

*Adoption and ratification.*—The plan is not an innovation of the respondent Bank. Of the twelve land banks established by the Act (Section 4, 12 U. S. C. 671), the banks of Houston, Berkeley, Columbia, New Orleans, Omaha, St. Louis, St. Paul, and Wichita had developed, and other banks were studying, plans for their respective farm credit districts generally similar to the plan here involved at the time of the hearing in the district court (R. 112).<sup>9</sup> Each of these plans had received the approval of the Farm Credit Administration<sup>10</sup> (R. 112).

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<sup>8</sup> Under the Act, associations may voluntarily consolidate, with the approval of the supervising agency, but cannot be compelled to do so. Section 29, 12 U. S. C. 965.

<sup>9</sup> Of these plans, all but those of the Wichita and St. Louis banks were in actual operation prior to the hearing in the district court. The records of the Farm Credit Administration reveal that the Wichita plan and one involving the Bank of Spokane have since been put into operation. As of June 30, 1945, a total of 2,753 out of the 2,932 associations in the nine districts in which plans had become effective had executed agreements evidencing their participation and approval of the plans. 12th Annual Report of the Farm Credit Administration (1944-1945), H. Doc. 268, 79th Cong. 2d Sess., p. 25.

<sup>10</sup> The 12th Annual Report of the Farm Credit Administration (see preceding note) at pp. 25-27, as supplemented by records of the Administration, reveals the following with respect to the plans now in operation: Consolidations under

The Houston plan was the prototype of the plans adopted in the other districts. Prior to the adoption of the instant plan, a committee of the Bank's directors and officers personally visited Houston and intensively studied the plan there in operation (R. 111-112). The legal aspects of the plan were approved by counsel for the Bank and the Department of Agriculture (R. 112). The plan was formally approved by the Bank on July 19, 1943, and by the supervisory agency on July 31, 1943. The boards of directors of 80% of the fourth-district associations thereafter ratified the plan (R. 344). Upon the further acceptance, as prescribed by the Bank's directors (R. 107-108, 301), by direct vote of the stockholders of over 70% of the fourth-district associations, the plan was declared in effect on January 1, 1944, to be operative as of December 1, 1943 (R. 300-308).

#### 4. PROCEEDINGS BELOW

Answers to the amended complaint were filed by the Bank (R. 24-74) and by its directors (R. 22,

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these plans (other than the instant plan) have reduced the number of associations in those districts from 2500 to 1025; the amount of money paid or to be paid the impaired associations of these districts is about \$13,000,000; the cancelled indebtedness of impaired associations amounts to approximately \$77,000,000, of which about \$53,000,000 was uncollectable, and reserves for presently foreseeable losses for all associations have been established in the approximate amount of \$10,000,000.



23), averring generally that the plan had been adopted in pursuance of sound governmental and business policy. The answers of the directors additionally alleged their good faith in approving the plan "in the interest of the bank and of the national farm loan associations of the district" (R. 23).

The district court filed findings of fact, conclusions of law (R. 418-421) and an opinion (R. 403-417) on November 16, 1944, and, on November 25, 1944, it entered its decree dismissing the action (R. 421). A petition for rehearing (R. 422-424) was overruled without opinion on December 27, 1944 (R. 424). The court below affirmed on December 13, 1945 (R. 438-448).

#### ARGUMENT

The district court took the view that this case turned on corporate law, and particularly "a question which addresses itself directly to the judgment of [the Bank's] \* \* \* Board of Directors." It concluded that the director's "decision in the matter, although not in accordance with the plaintiffs' views, appears sufficiently supported by good business judgment as to place it well beyond the scope of judicial review" (R. 417). The court below agreed with this holding upon the facts here involved and further held that there is here presented a supervening question—whether a court should interfere "with the functioning of a governmental agency engaged in



implementing a clearly defined public policy" (R. 446) whose challenged action, moreover, has been approved by "an agency of the United States \* \* \* specifically authorized to exercise a general supervisory authority over federal land banks" (R. 447). Viewed in this aspect, we submit, petitioners could prevail only upon a showing that the adoption of the plan was arbitrary and capricious or clearly beyond the powers conferred upon the agencies involved. The holdings of both courts below upholding the plan are so clearly correct, we submit, that review by this Court is unwarranted.

1. The action of the Bank and the supervising agency, in approving the plan, can hardly be accurately characterized as arbitrary or capricious. The plan contains a statement of the benefits which will accrue to the Bank from its consummation (R. 45-51). It is noted (R. 34) that a decline in the mortgage loan account of the Bank is being experienced, and it is stated that the adverse impact of publicity concerning the failure of many of the associations to return to borrowers the value of their stock subscription upon the full repayment of loans cannot be borne indefinitely (R. 44, 49). Primary stress is placed, however, upon the advantages of consolidation and the consequent elimination of "insolvent associations, overlapping associations and associations which because of uneconomic setups

are unable to render to the farmers of their territories the full service which the law contemplates the system shall render \* \* \*” (R. 33).

Under the statutory scheme, the associations are indispensable functionaries of the bank. It is only in exceptional cases that the bank may make mortgage loans otherwise than through associations, and then only at higher rates of interest (see *supra*, note 6, p. 6). Consequently, the bank has always found it to its own interest to deal generously with associations. In the early years of the land bank system, the bank absorbed all losses for which an association was liable and has never sought judicial enforcement of the endorsement liability. Thereafter, an indemnity arrangement was evolved for the purpose of minimizing the shock of losses to associations. Under that agreement, associations were charged with loss on an endorsed loan only after disposition by the bank of a foreclosed farm, and were given credit for profits realized by the bank in other transactions. Allowances have also been made to associations in recognition of the advantage to the bank of promoting the fullest cooperation of associations in the performance of the services authorized by the Act to be performed by them. A part of these allowances was set apart for use in the payment of losses after exhaustion of other association assets. (R. 100-101.) It thus appears that the association plan now under consideration is distinguishable from previous arrangements

made by the bank with associations only in the greater scope and permanence of the benefits sought to be derived.

The permanence and substantiality of such benefits under the plan may not be doubted. Despite former palliatives, there were, as stated, *supra*, pp. 8-9, 129 associations in the fourth district with a substantial capital impairment on the date of adoption of the plan. And since such associations in Class 3 and 4 are not permitted to make new loans for the reason that the mandatory investment in the stock of such associations on the part of a new borrower would be unjustified, the system has had to adopt extraordinary remedies to avoid complete paralysis of the credit service in those districts (R. 99-100). The factors contributing to the impairment of these associations have been the prevailing overlapping of territories and the fact that the territories in themselves have been too small to permit proper distribution of risks. The plan proposes to reduce through consolidations the existing 434 fourth-district associations to 94 financially sound, self-sustaining, economic units. Consolidations are to take place only pursuant to agreements of constituent associations (R. 107, 281-296). The conclusion of the Bank and the supervising agency that a restoration to solvency of the impaired associations is a necessary prerequisite to the achievement of this end cannot be challenged as arbitrary or capricious. A consolidation of a

solvent association with an impaired association would be highly impracticable; a consolidation of impaired associations would be futile.

2. Petitioners have misconceived their status under the Act in asserting that the judicial sanction given the plan by the court below will create "doubt and suspicion as to the future of investments [and] inevitably result in economic chaos" (Pet. 17). As the court below properly observed, the stock holdings of borrowers and associations under the statutory scheme are acquired "by compulsion rather than by choice" (R. 446) and are not investments in any usual sense of the term. This is most graphically underlined by the fact that borrowers' purchases of stock in the associations, if permitted, and the resulting and corresponding purchases of bank stock by the associations, are made at par irrespective of the financial condition of the association or bank. The holdings are immobilized during the currency of the loans, and are automatically retired at par upon repayment of the loans, subject only to the Bank's right of set-off. There is plainly no element of speculation or investment involved; in order to become a stockholder in an association, one must also become a borrower from the bank at a statutory rate of interest. Section 8, 12 U. S. C. 733.

As was recognized at the Act's inception, the making of profits under the statutory scheme is entirely subordinate in purpose to the rendition

of an effective long-term credit service to farmers at the lowest possible cost.<sup>21</sup> To effectuate this purpose, the Federal government has liberally participated. The Government's original (see R. 105, 267), and subsequent (see R. 105-106, 269), subscriptions to the capital stock of the land banks did not carry dividend rights (Act of 1916, Section 5, 12 U. S. C. 694). Additionally, Congress, in the years 1933-1943, appropriated \$268,166,000 to reimburse the land banks for a statutory reduction in interest rates; the respondent Bank partook of this appropriation to the extent of \$26,529,206 (R. 106, 273). The primary public concern with the efficient operation of the farm credit system, thus illustrated, is further evidenced by the composition of the banks' board of directors (*supra*, pp. 5-6) and the vesting of general supervisory authority in the Farm Credit Administration.

In the light of the foregoing, it is submitted that the duty of the agencies administering the Act runs not only to present but also to future borrowers, and that petitioners and the farm loan associations generally are, therefore, congenitally subject to all measures reasonably calculated to achieve the primary objective of the Act—the rendition of a low-cost credit service to farmers on a basis approaching equality in so far as

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<sup>21</sup> 1st Ann. Rep. of Federal Farm Loan Board (1917), H. Doc. 714, 65th Cong., 2d Sess., p. 13; see also S. Rep. No. 144, 64th Cong., 1st Sess. (1916), p. 5.

feasible. Cf. Section 17, 12 U. S. C. 831 (b). Plainly, the plan cannot be successfully challenged as an abuse of discretion (the criterion ordinarily governing actions of this nature, see *Williams v. Green Bay & Western R. R. Co.*, No. 100, this Term and cases cited at note 10; cf. *Adams v. Nagle*, 303 U. S. 532, 540-542) when adopted in the interest of the Act's primary beneficiaries. See *Morrison v. State Bank of Wheatland*, 58 Wyo. 138, 166.

As of December 31, 1943, moreover, the respondent Bank's earned surplus amounted to over \$12,000,000; it had a legal reserve of over \$11,000,000, and reserves against specific assets amounting to approximately \$4,000,000 (R. 242). Plainly the total initial cost of the plan (approximately \$2,600,000, *supra* p. 9) will in no way jeopardize the ability of the Bank to repay its associations the par value of their stock holdings as they become due through repayment of farmer's loans, nor, for that matter, the payment of a reasonable dividend if authorized by the supervisory authority. Moreover, as has already been stated, *supra* pp. 9-10, the effectuation of the plan will result in economies which will repay the entire cost of the plan within a period not exceeding eight and one-half years.<sup>12</sup>

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<sup>12</sup> Since loans through associations are for periods extending from 10-36 years (R. 193), it is apparent that only a relatively minor percentage of them will be repaid in the course of this period. This fact further evidences the complete ability of the Bank to retire its stock holdings as they become due under the Act during the period of recoupment.

3. As the district court noted, petitioners' major disagreement with the plan arises out of "their failure to receive immediate tangible benefits therefrom." (R. 416.) We believe that, in the absence of a specific statutory barrier in the way of the plan's consummation, such a grievance cannot serve to outweigh the factors already adverted to and upon which the respondents, reasonably and in good faith, relied in deciding upon the necessity for the plan. Petitioner's contention that the plan is prohibited by statute is without merit. Both of the lower courts properly held that Section 29, Appendix, *infra*, pp. 30-32, providing for the appointment of a receiver or conservator for insolvent associations, is permissive rather than mandatory, as is plain from the very language of the Section, and that such appointments are not the exclusive methods of dealing with insolvency of associations, let alone the broader problems with which the plan is designed to cope (R. 415-416, 448). Not only does the language of Section 29, by itself, serve as a sufficient foundation for this conclusion of the courts below, but practical considerations also would seem to make that view compelling. The appointment of a receiver to liquidate insolvent associations would, as the court below noted (R. 445), "present many practical difficulties," and would leave a host of dissatisfied former borrowers who have paid their loans in full but have not received the par value of their association



stock, thus materially impairing confidence in the system. There would seem to be no warrant, moreover, for the appointment of a conservator under Section 29, since there is nothing in the record to show that the difficulties of the associations arose out of incompetent management or that a conservator could accomplish, any more than the present management, the basic changes deemed necessary by the responsible agencies operating under the Federal Farm Loan Act. Surely, the remedies provided in Section 29 cannot be exclusive with respect to the Farm Credit Administration when they are not so with respect to the rights of creditors of federal land banks. See *Federal Land Bank v. Priddy*, 295 U. S. 229, 234.

Finally, if the plan is unassailable otherwise, Section 5, Appendix, *infra*, p. 29, providing for dividend distributions without preference, creates no infirmity. That provision would be relevant if the distribution of moneys contemplated could be justified as a dividend or not at all; petitioners cannot sustain their objection on a wholly unreal characterization of the distribution as a dividend, when it was not so intended and partakes of none of the characteristics thereof.

4. The Federal land banks are vested with all the usual powers of a private business corporation. They may regulate the manner in which their "general business" shall be conducted. They are empowered also "to acquire and dispose



of \* \* \* property"—"to make contracts,"—"to borrow money, \* \* \* give security therefor, and \* \* \* pay interest thereon"—"to issue \* \* \* bonds"—"to sue and be sued \* \* \* as fully as natural persons," and to exercise "all such incidental powers as shall be necessary to carry on the business" of the banks. Sections 4 and 13, Appendix, *infra*, pp. 28-29, 29-30. It was contemplated, at the time of the organization of the Federal land bank system, that the banks would be privately owned and, consequently, they were given the same general corporate powers as the privately-owned joint stock land banks. See *Federal Land Bank v. Priddy*, 295 U. S. 229, 232, note 1.

The supervising agency, in addition to authority generally and specifically conferred upon it, is empowered "to exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes" of the Act, and "to make such rules and regulations, not inconsistent with law, as it deems necessary or requisite for the efficient execution of the provisions" of the Act."

The adoption of this and similar plans by other land banks (*supra*, p. 10) would seem clearly to constitute a regulation of the manner in which the "general business" of the Bank shall be conducted as well as an exercise of "such incidental

<sup>23</sup> See Section 17 of the Federal Farm Loan Act and Section 6 of the Act of January 23, 1932, 47 Stat. 14, Appendix, *infra*, pp. 29, 32.

powers as shall be necessary to carry on the business" of the banks. In the light of the difficulties the system is now experiencing, and its previous history, the establishment of sound self-sustaining associations is indispensable to the continued functioning of the Bank in the manner contemplated by the Act. Nor are petitioners correct in urging that the plan is *ultra vires* the power of the Bank because the disbursements thereunder constitute gifts to the impaired associations (Pet. 41). Adequate consideration for these disbursements is found in the agreements required of participating associations to the proposed consolidations, with all the attendant benefits to the Bank.<sup>14</sup> And, as above noted (*supra*, pp. 9-10), the actual economies effected by the consolidations will permit recoupment of the plan's total cost in a period not exceeding eight and one-half years. In the meantime, the Bank will be enabled to carry on its business through properly organized intermediaries, and to pay a large group of dissatisfied farmers who have not received repayment of their stock subscriptions although they have fully discharged their loan obligations.

Petitioners apparently concede (Pet. 36) that *Green Bay and Minnesota R. Co. v. Union Steamboat Co.*, 107 U. S. 98, would establish the power of a private corporation to engage in one of the

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<sup>14</sup> See *supra*, note 8, p. 10.

three salient provisions of the plan—the establishment of reserves to be applied against foreseeable future association losses. Cf. also *Dunn v. McCoy*, 113 F. 2d 587 (C. C. A. 3). But it is apparent that the other features of the plan are also within the scope of a private corporation's implied powers. Even assuming, as petitioners contend, that the funds to be applied to the retirement of outstanding stock retirement certificates will not result in a calculable monetary benefit to the Bank, analogous measures adopted by private corporations are recognized as legitimate business expenses in the interest of "good will," even where the result of inaction in this field cannot be shown, as it can here, to result in hostility to the enterprise.<sup>15</sup> The Bank's relinquishment of the right of set-off against the association's stock holding under the facts here presented is equally supportable upon the same theory and, independently, by numerous cases upholding, against the complaint of a stockholder, management de-

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<sup>15</sup> *American Rolling Mill Co. v. Commissioner of Internal Revenue*, 41 F. 2d 314 (C. C. A. 6); *Steinway v. Steinway & Sons*, 17 Misc. 43, 40 N. Y. S. 718; *Hawes v. Oakland*, 104 U. S. 450; *In re Wood's Estate*, 299 Mich. 635, 1 N. W. 2d 19; *Putnam v. Juvenile Shoe Corporation*, 307 Mo. 74, 269 S. W. 593; *American Nat. Assur. Co. v. Ricketts*, 230 Ky. 398, 19 S. W. 2d 1071; *Heinz v. National Bank of Commerce*, 237 Fed. 942 (C. C. A. 8); *Forbes Lithograph Mfg. Co. v. White*, 42 F. 2d 287 (D. Mass.); *Corning Glass Works v. Lucas*, 37 F. 2d 798 (App. D. C.), certiorari denied, 281 U. S. 742; *People v. Hotchkiss*, 136 App. Div. 150, 120 N. Y. Supp. 649.

terminations that the corporation's best interests will be served by declining either to assert claims held by, or to resist claims asserted against, the corporation.<sup>16</sup> The entire plan is fully supportable by the decisions upholding analogous measures adopted by private corporations for the assistance of allied operating units,<sup>17</sup> or for the

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<sup>16</sup>(a) *Non-assertion of particular claims*:—*Hawes v. Oakland*, 104 U. S. 450, 462, claim of private water company for water supplied to a municipality; *Post v. Buck's Stove & Range Co.*, 200 Fed. 918 (C. C. A. 8), and *United Copper Co. v. Amalgamated Copper Co.*, 244 U. S. 261, claims of industrial companies for treble damages under Sherman Antitrust Act; *Watson v. Consolidated Laundries Corp.*, 235 App. Div. 234, 256 N. Y. S. 891, claim of industrial company for damages in tort. See also *United States v. Union Pacific R. R. Co.*, 98 U. S. 569, 610-611.

(b) *Non-resistance to particular claims*:—*Hornstein v. Paramount Pictures, Inc.*, 37 N. Y. S. 2d 404, affirmed, 266 App. Div. 659, 41 N. Y. S. 2d 210, affirmed, 292 N. Y. 468, 55 N. E. 2d 741, claim against corporation by racketeers for "protection"; *Levine v. Behn*, 174 Misc. 988, 21 N. Y. S. 2d 805, 809, affirmed, 262 App. Div. 729, 28 N. Y. S. 2d 711, leave to appeal denied, 286 N. Y. 734, 36 N. E. 2d 918 (1941), claim against bank which was regarded by management as invalid.

<sup>17</sup>*General Inv. Co. v. Bethlehem Steel Corp.*, 248 Fed. 303 (D. N. J.), guarantee by parent company of bonds of subsidiary; *Blake v. Domestic Manuf'g Co.*, 64 N. J. Eq. 480, 38 Atl. 241 (1897), guarantee by manufacturing company of notes of customers and agents of interlocking trading company; *Howard v. Tatum*, 81 W. Va. 561, 94 S. E. 965 (1918); *Edwards v. International Pavement Co.*, 227 Mass. 206, 116 N. E. 266 (1917), financial assistance by corporate owner of patent to company manufacturing the patented article; *Henderson Tire & Rubber Co. v. Gregory*, 16 F. 2d 589 (C. C. A. 8), guarantee by a manufacturing company of commercial paper of interlocking sales company; *North*

extrication of the corporation from a situation imperiling continued successful operations. Cf. *Atherton v. Anderson*, 86 F. 2d 518 (C. C. A. 6), remanded, 302 U. S. 643, modified on other grounds, 99 F. 2d 883.

Petitioners seek to escape the force of these decisions by asserting that the Bank is not a "competitive business institution" (Pet. 40-41). The contention, if accurate, is hardly relevant. An effectuation of the purposes of the farm credit service "to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, [and] to equalize rates of interest upon farm loans", etc.,<sup>18</sup> necessarily requires the adoption of what may be termed competitive business methods. Failure to remedy the existing situation would remove the liberalizing influence on the rates charged by

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*American Life Ins. Co. v. Remedial Finance Corp.*, 178 Okla. 248, 62 P. 2d 491 (1936), endorsement by insurance company of note of agent; *Marbury v. Kentucky Union Land Co.*, 62 Fed. 335 (C. C. A. 6), guarantee by timber company of construction bonds of railroad transporting timber products with which the company was authorized to consolidate; *Lyon, Potter & Co. v. First Nat'l Bank*, 85 Fed. 120 (C. C. A. 8), endorsement by industrial corporation of note of its selling agency; *First Nat. Bank of Fairfax v. Pacific Elevator Co.*, 159 Minn. 94, 198 N. W. 304 (1924), guarantee by elevator company of notes of a milling company in which it was interested as stockholder. See, also, *Green Bay and Minnesota R. Co. v. Union Steamboat Co.*, 107 U. S. 98, guarantee by railroad of gross earnings of steamboat company connecting with the railroad.

<sup>18</sup> 39 Stat. 360.

private credit agencies which *inter alia* Congress undoubtedly intended the system to exert. But assuming that petitioners' characterization of the Bank as "non-competitive" is in some measure accurate, the fact remains that the Act contains no hint of any restriction on its powers based on that circumstance. As shown heretofore, the Bank has the usual powers of a private corporation, and a corporate power is conferred in order that the corporate objective may be attained. Even a "non-competitive" enterprise will fall short of its purposes if adequate measures are not taken for the improvement and preservation of its business.

Finally, as was stressed by the court below, the adoption of the plan here challenged was approved by the Farm Credit Administration, which, as above pointed out, is vested with general supervisory authority over the land banks and associations. In such circumstances, any remaining doubt as to the power of the Bank under the Act to adopt the plan must be resolved in favor of its legality. "When dealing with such necessarily argumentative concepts as those of which the law of *ultra vires* is so largely composed, the responsible and pervasive practice of public officers bent on safeguarding the public interests ought to carry the day even were the issue more in doubt than we believe it to be." *Inland Waterways Corp. v. Young*, 309 U. S.

517, 525. Cf. *United States v. Midwest Oil Co.*, 236 U. S. 459, 473; *Skidmore v. Swift & Co.*, 323 U. S. 134, 139-140.

#### CONCLUSION

The decision below is correct and no conflict exists. Indeed, no litigation has arisen out of similar plans adopted and put into operation by eight other Federal Land Banks. See *supra*, p. 10, note 9. We respectfully submit that the petition for a writ of certiorari should be denied.

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## APPENDIX

The Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, as amended, 12 U. S. C. 636, *et seq.* provides, in most pertinent part, as follows:

### SEC. 4. \* \* \*

Upon duly making and filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First: To adopt and use a corporate seal.

Second: To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third: To make contracts.

Fourth: To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth: To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth: To prescribe, by its board of directors, subject to the supervision and regulation of the Farm Credit Administration, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property



transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh: To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described. [12 U. S. C. 676]

SEC. 5. \* \* \*

Stock owned by the Government of the United States in Federal land banks shall receive no dividends, but all other stock shall share in dividend distributions without preference. \* \* \* [12 U. S. C. 694]

SEC. 13. Every Federal land bank shall have power, subject to the limitations and requirements of this Act—

First: To issue, subject to the approval of the Farm Credit Administration, and to sell farm loan bonds. \* \* \*

\* \* \* \* \*

Fourth: To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

\* \* \* \* \*

Seventh:—To borrow money, to give security therefor, and to pay interest thereon. [12 U. S. C. 781]

SEC. 17. The Farm Credit Administration shall have power—

\* \* \* \* \*

(i) To exercise general supervisory authority over the Federal land banks, the national farm-loan associations, and the

joint stock land banks herein provided for.

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act. [12 U. S. C. 831]

SEC. 29. Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Farm Credit Administration may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: \* \* \* Such receiver, under the direction of the Farm Credit Administration, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, with the approval of the Farm Credit Administration, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Farm Credit Administration or said court shall direct. [12 U. S. C. 961]

\* \* \* \* \*

No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Farm Credit Administration, but national farm loan associations may consolidate under rules and regulations promulgated by the Farm Credit Administration. [12 U. S. C. 965]

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Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of

any description, and that it will be to the best interests of its creditors and stockholders for the association to continue in business, the Farm Credit Administration may, in its discretion, in lieu of appointing a receiver as hereinabove in this Section provided, appoint a conservator for such association and require of him such bond and security as the Administration may deem proper. \* \* \*

The conservator, under the direction of the Farm Credit Administration, may, when directed so to do, take possession of the books, records, and assets of every description of such association, and take such action as may be necessary to conserve such assets pending final determination of the financial condition of the association and the conditions under which it may be permitted to continue in business. Such conservator shall at the earliest practicable date make such investigations as shall be necessary to enable him to prepare an accurate report on the financial condition of such association. \* \* \*

If said report is approved, in whole or in part, by the Farm Credit Administration, upon recommendation of the Federal land bank of the district said Administration shall then decide whether such association shall be permitted to pay off and retire its capital stock at its fair book value, upon full payment of the mortgage loans in connection with which such stock was issued originally, and to settle on the same basis the claims of any of its stockholders who have previously paid their loans in full, but have not received credit for, or the proceeds of their stock in such association. At the same time the Farm Credit Administration shall also decide whether it will permit said

association to admit new members pursuant to section 25 (b) of the Farm Credit Act of 1937. If the decision of said Administration is in the affirmative, it may terminate the conservatorship and turn the affairs of the association back to its board of directors. If said report is not approved or the decision of said Administration is in the negative, it may, in its discretion, terminate the conservatorship and permit such association to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as it may prescribe for the protection of the rights of creditors and stockholders, or said Administration may appoint a receiver for the association as elsewhere provided in this section.

\* \* \* \* \*

In the event that the indebtedness, as determined by the conservator, of an association which has been under conservatorship pursuant to this section increases in excess of the earnings of such association, the Farm Credit Administration may, in its discretion, again appoint a conservator for the association, or it may appoint a receiver as elsewhere provided in this section.  
[12 U. S. C. 967]

Section 6 of the Act of January 23, 1932, 47 Stat. 12, 14, provides as follows:

The Farm Credit Administration is authorized to make such rules and regulations, not inconsistent with law, as it deems necessary or requisite for the efficient execution of the provisions of the Federal Farm Loan Act, and/or any Act or Acts amendatory thereof or supplementary thereto.  
[12 U. S. C. 665]

